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TAYLOR SNOW, and all others similarly situated
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY
(*UNLIMITED JURISDICTION*)

TAYLOR SNOW, on behalf of herself and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

555 OCEAN VIEW BLVD LLC (D/B/A SEVEN GABLES INN), a California limited liability company; KIRKWOOD COLLECTION, INC., a California corporation; KIRKWOOD COLLECTION HOLDINGS LLC, a California limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 23CV001630

PLAINTIFF TAYLOR SNOW'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT

Hearing Date: May 22, 2026
Hearing Time: 8:30 a.m.
Hearing Dept.: 14, The Honorable Ian A. Rivamonte
Action filed: May 19, 2023

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TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Cases **Page(s)**

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT

I. INTRODUCTION

Plaintiff Taylor Snow ("Plaintiff" or "Snow") submits this memorandum of points and authorities in support of her motion for approval of the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement" or "Settlement")[1] for the civil penalties claim she brought against Defendants 555 Ocean View Blvd LLC (D/B/A Seven Gables Inn), Kirkwood Collection, Inc., and Kirkwood Collection Holdings LLC (collectively "Defendants") under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). Plaintiff brings this motion because Labor Code section 2699(l) of the PAGA requires Court-approval of any civil penalties sought as part of a proposed settlement agreement. Based on Plaintiff's and her attorneys' investigation and evaluation, Plaintiff is of the opinion that the PAGA Settlement Agreement represents a reasonable and adequate settlement of strongly disputed claims and is in the best interest of the State of California, the Aggrieved Employees, and Plaintiff. Through this motion, therefore, Plaintiff respectfully requests for this Court to approve the PAGA Settlement Agreement for resolution of the PAGA claim. The Plaintiff seeks division of the $180,000.00 Gross Settlement Amount as follows:

Item	**Amount**
PAGA Counsel Fees Payment	$60,000.00
PAGA Counsel Litigation Expenses Payment	$31,000.00
Administration Expenses Payment	$12,500.00
PAGA civil penalties (Net Settlement Amount)	$79,000.00
25% to Aggrieved Employees	$19,750.00
75% to LWDA	$59,250.00
Gross Settlement Amount	**$180,000.00**

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[1] The PAGA Settlement Agreement is attached as **Exhibit** ("Ex.") **1** to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants own and operate hotels and resorts. DS, ¶ 3. Defendants employed Plaintiff as a front desk agent/reservationist from about January 18, 2022 until June 20, 2022. *Id*. DS, ¶ 3.

A. Plaintiff's Written Notice to the State of California

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. By letter dated May 18, 2023, Plaintiff, on behalf of herself and other aggrieved hourly employees, gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. DS, ¶ 4, Ex. 3.

B. Plaintiff's PAGA Claim

Plaintiff and the Aggrieved Employees are subject to arbitration agreements with Defendant. Plaintiff filed her lawsuit in Monterey County Superior Court on May 19, 2023. DS, ¶ 5, Ex. 4. On July 27, 2023, Plaintiff filed a First Amended Complaint ("1AC"). DS, ¶ 5, Ex. 5. Plaintiff's complaint presents one cause of action for civil penalties under PAGA. *Id*. Shortly after Plaintiff served her first set of discovery requests, the Parties agreed to stay formal discovery and participate in mediation. Defendants deny all of Plaintiff's allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 5.

C. Mediation

On September 08, 2025, the Parties participated in mediation with mediator Steven Pearl in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The PAGA Settlement Agreement was reached after exchanges of data, information and documents, and is a result of extensive arms-length negotiations. The Parties conducted informal discovery for purposes of potential resolution through which they ascertained the size of the aggrieved employee group and the number of pay periods worked by them during the PAGA Period to ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized the PAGA Settlement Agreement, Plaintiff submits it to this Court for approval. DS, ¶ 6.

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III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

"Aggrieved Employee" means a person employed by Defendants at the Seven Gables Inn in California and classified as hourly and non-exempt who worked for Defendants during the PAGA Period. Settlement ¶ 1.4. The PAGA Period is any time during the period from May 18, 2022 through September 08, 2025 (the "PAGA Period") (collectively referred to as "Aggrieved Employees"). Agreement, ¶ 1.20.

B. Monetary Terms Of The Settlement

Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay $180,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. (Settlement Agreement ¶ 3.1.).

Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Court's Approval order:

To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be $60,000.00 and a PAGA Counsel Litigation Expenses Payment of not more than $31,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA

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Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. (Settlement Agreement ¶ 3.2.1.).

To the Administrator: An Administrator Expenses Payment not to exceed $12,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $12,500.00, the Administrator will retain the remainder in the Net Settlement Amount. (Settlement Agreement ¶ 3.2.2.).

To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $79,000.00 to be paid from the Gross Settlement Amount, with 75% ($59,250.00) allocated to the LWDA PAGA Payment and 25% ($19,750.00) allocated to the Individual PAGA Payments. (Settlement Agreement ¶ 3.2.3.).

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($19,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement Agreement ¶ 3.2.3.1.).

If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

- The Parties have also entered into a separate Individual Plaintiff Settlement in the amount of $10,000 for the full dismissal, settlement, waiver, and release of Plaintiff's known and unknown individual claims. (Settlement Agreement ¶ 3.2.3.2.). That payment does not reduce the $180,000 PAGA settlement fund and resolves claims that were compelled to arbitration.

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C. Timing of Payments

Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date as follows: Defendants shall pay $5,000 monthly for 36 months. (Settlement Agreement ¶ 4.3.). The settlement fund will be paid in installments of $5,000 per month over thirty-six months due to Defendants' financial condition. Defendants produced verified financial records, including income tax records and P&L documents, during settlement negotiations showing that immediate payment of the full settlement amount would threaten their continued operation. The installment structure ensures payment of the full settlement amount while avoiding the risk of operational interference which would result in Defendant becoming unable to satisfy any judgment obtained through litigation.

Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the 12th, 24th, and 36th installment payments toward the Gross Settlement Amount, the Administrator will mail checks for pro rata shares of all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. (Settlement Agreement ¶ 4.4.).

D. Calculation of Settlement Shares

Individual PAGA Payment means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period. (Settlement Agreement ¶ 1.11.).

E. Apportionment of Settlement Shares

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($19,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement Agreement ¶ 3.2.3.1.).

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If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

- The Parties have also entered into a separate Individual Plaintiff Settlement in the amount of $10,000 for the full dismissal, settlement, waiver, and release of Plaintiff's known and unknown individual claims. (Settlement Agreement ¶ 3.2.3.2.).

F. The Releases

RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual PAGA Payments, Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

Plaintiff's Release. With the exception of the individual claims Plaintiff has stated in her demand for arbitration, Plaintiff and her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party. (Settlement Agreement ¶ 5.1.).

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (Settlement Agreement ¶ 5.2.).

Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (Settlement Agreement ¶ 5.3.).

G. Notice Process and Procedures

Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the 12th, 24th, and 36th installment payments toward the Gross Settlement Amount, the Administrator will mail checks for pro rata shares of all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. (Settlement Agreement ¶ 4.4.).

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. (Settlement Agreement ¶ 4.4.1.).

The Administrator must conduct an Aggrieved Employee Address Search for all other

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Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (Settlement Agreement ¶ 4.4.2.).

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such check to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Settlement Agreement ¶ 4.4.3.).

The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. (Settlement Agreement ¶ 4.4.4.).

H. Uncashed Checks

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such check to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Settlement Agreement ¶ 4.4.3.).

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

In 2003, the California Legislature, concerned that state labor laws were not being adequately enforced, enacted PAGA to deputize "aggrieved employees" to pursue civil penalties. *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81. An aggrieved employee is a person who was employed by the Defendants employer and who suffered one or more of the alleged Labor Code violations. Lab. Code § 2699(c).

The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The

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Court necessarily has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2), Although the PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the standards for evaluating class action settlements. *See, e.g.*, *Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

PAGA penalties are in the nature of a law enforcement penalty and are designed to penalize an employer for its failure to comply with California's wage and hour laws and regulations and are not designed to compensate employees. *Ochoa-Hernandez v. CJADERS Foods, Inc.,* 2010 WL 1340777 *1, *5 (E.D. Cal. Apr. 2, 2010). ("Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any, reached between the parties.").

PAGA settlements are subject to trial court review and approval. Lab. Code § 2699(l)(2). "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable,

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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, 77. Many of the same factors used to evaluate the fairness of a class action settlement can be "useful" in evaluating the fairness of a PAGA settlement. *Id.* These include:

1. Strength of plaintiff's case. This is the most important factor.
2. Expense associated with taking the case to trial, *i.e.,* the avoided cost of further litigation.
3. Amount or value offered in settlement.
4. Extent of discovery completed and state of proceedings.
5. Experience and views of counsel.
6. Presence of a governmental participant.
7. Reaction of class members to proposed settlement.

Moniz suggests items 1-6 from this list may provide guidance in the PAGA setting; obviously item 7 does not apply, because the non-party aggrieved workers in a PAGA case are entitled to no notice and have no opt out rights. *Arias v. Superior Court* (2009) 46 Cal.4th 969.

In making the determination whether a settlement taken as a whole is fair, reasonable, and adequate, the Court should be careful to still give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties . . . ." *Hanlon*, 150 F.3d at*,* 1027. The law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synocor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

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B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA.

PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here. First, any civil penalties recovered, whether by judgment or settlement, must be distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See Moorer v. Noble L.A. Events, Inc*. (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The Parties' Settlement so provides. Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code § 2699(l)(2). Under the Settlement, notice is being given to the LWDA concurrently with the filing of this motion. DS, ¶ 7, Ex. 6. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

C. THIS COURT SHOULD APPROVE the PAGA SETTLEMENT AGREEMENT BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE IN VIEW OF PAGA'S PUBLIC POLICY GOALS.

To make its determination that the PAGA Settlement Agreement is fair, reasonable, and adequate, the Court may consider several factors, including:

> the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel.

revert v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886, *6. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation . . . ." *Dunk*, 48 Cal. App. 4th at 1802.

The PAGA Settlement Agreement warrants a presumption of fairness for several reasons:

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(1) The Parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved Employees, the number of total pay periods during the PAGA Period, and all policies in effect during the relevant time period; and (3) Counsel for the Parties are experienced with PAGA cases. DS, ¶ 8. For the reasons discussed below, this Court should approve the PAGA Settlement Agreement .

1. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A court has discretion under PAGA to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. DS, ¶ 14. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶ 14. For mediation purposes, Plaintiff's counsel estimated a maximum exposure of approximately $3,208,500.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

In preparation for mediation and during the settlement negotiations that followed, Defendants disclosed that there were approximately 72 potentially aggrieved employees and 1,714 pay periods. The maximum possible civil penalties under the PAGA is the total number of

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pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period. Unfortunately for the employees concerned, the potential for recovery of the maximum possible civil penalties depends on circumstances that are extremely unlikely independently and in combination. It would depend on the Court stacking the maximum recoverable civil penalties for $750.00 per pay period for all 1,714 pay periods for all 72 potentially aggrieved employees during the PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a plaintiff and the other aggrieved employees she represents multiple civil penalties for the same pay period under different Labor Code provisions. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below). DS, ¶ 15.

a. Risks Associated with Defendants' Financial Condition

Defendants' financial condition was the key factor in reaching this Settlement. DS, ¶ 16. Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may never recover the damages due to the risk of insolvency. *Id.* A very large civil penalties judgment would almost certainly put the Defendants out of business and/or would interfere with the company's ability to carry out their contractual obligations. *Id.* In short, the "poor financial health of [the Defendants will] seriously increase [] the chance that Plaintiffs would be left with nothing if they continued to litigate their claims." *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of Defendants predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning Defendants' financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at *11 (finding potential insolvency to be additional risk that favors approval of a class action settlement). Accordingly, Defendants' financial distress supports this settlement. *Id*.

b. Risks Associated with Plaintiff's Claim That Defendants Failed To Pay All Earned Wages at the Correct Rates of Pay

There is a risk that Plaintiff's claim that Defendants did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendants' written policies

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throughout the relevant time period prohibited off-the-clock work. DS, ¶ 17. Off-the-clock claims are difficult where a Defendants requires in their written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. DS, ¶17. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of civil penalties seems unlikely with respect to this claim. *Id.*

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate methodology for all aggrieved employees. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees. DS, ¶ 18.

c. Risks Associated with Plaintiff's Claim That Defendants Failed To Provide All Meal Periods

There are risks to Plaintiff's claims that Defendants filed to provide all meal periods. DS, ¶ 19. Defendants contend that, to establish a violation of the meal period law, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an

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employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiff, or any other employees, from taking their meal periods. DS, ¶ 19 Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id*. The time records that comprise the random sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. *Id*. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the recoverable amount of civil penalties for unprovided meal periods would be substantially reduced at trial. *Id*.

d. Risks Associated with Plaintiff's Claim That Defendants Failed To Authorize or Permit Rest Breaks

There are risks to Plaintiff's claims that Defendants failed to authorize or permit rest breaks. DS, ¶ 20. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id*. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

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Id., *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

e. Risks Associated with Plaintiff's Claim That Defendants Failed To Indemnify for Expenses

There is a risk that the Court may consider Plaintiff's claim that Defendants failed to indemnify for business expenses to be individual in nature and thus decline to allow a trial on behalf of all aggrieved employees and the State. DS, ¶ 21. Plaintiff alleges that Defendants required Plaintiff and the Aggrieved Employees to use their personal items for work, including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. *Id*. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. *Id*.

f. Risks Associated with Plaintiff's Claim That Defendants Failed To Issue Accurate and Complete Wage Statements

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS, ¶ 22.

Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id*. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226.

g. Risks Associated with Plaintiff's Claim That Defendants Failed To Timely Pay All Wages

Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good faith Defendants put forth will defeat this claim. DS, ¶ 23.

h. The Absence of Large Civil Penalty Awards under PAGA

The sole source of money recoverable for the Aggrieved Employees and the State is civil

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penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a minimum wage violation; (2) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered an overtime wage violation; (3) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a meal period violation; (4) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a rest period violation; and (5) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered an unreimbursed expense violation. There are no California state court decisions under the PAGA to date with substantial awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.[2] DS, ¶ 24.

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[2] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

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Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504* ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only $5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Under *Carrington*, assuming 4 violations for each pay period for all 72 Aggrieved Employees, will result in a recovery of $34,280.00 (1,714 pay periods x 4 violations x $5 = $34,280.00). DS, ¶ 25.

Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA. DS, ¶ 26, Exs. 10-11. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff civil penalties totaling only $50.00. A similar result could occur here. DS, ¶ 26 .

Defendants could also convince the Court to dismiss the claims due to unmanageability because determining whether each Aggrieved Employee worked off the clock or why each employee missed a meal or rest period would require separate mini-trials. *Id. See*, *Mendiola v.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the Defendants' failures to comply with the requirements of California Labor Code section 226. On May 28, 2021, the United States Court of appeals for the Ninth Circuit overturned the decision finding that there is no technical wage statement violation for a failure to list the rates and hours of pay associated with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs*., No. 19-16184, 2021 U.S. App. LEXIS 16070 (9th Cir. May 28, 2021).

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CPS Sec. Solutions, Inc. (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). The *Ortiz* court cited the "multitude of individualized assessments" that case would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating trial of plaintiff's claim from representative claims: "in light of the number of potential aggrieved employees, judicial economy favors deferring the representative portion of the PAGA claim"); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh'g denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims. DS, ¶ 27.

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the cost of pretrial and trial proceedings, the Court's discretion to lower the amount of penalties ultimately awarded, and the secured benefit to the Aggrieved Employees and the LWDA promoting compliance with the Labor Code. DS, ¶ 31.

i. The Risk That PAGA Claims Are Subject To Arbitration Agreements

The arbitration agreements entered into between Defendants on the one hand, and the Plaintiff and comparable workers, on the other, present a significant risk to the success of Plaintiff's representative litigation. DS ¶ 28. According to Defendants, the majority of the workers entered into arbitration agreements with Defendants. *Id*. As the arbitration agreements in question restrict potential litigants from bringing PAGA actions against Defendants, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. *Id*. As such,

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by continuing to trial on representative claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreements. Also, because different defenses would apply to some workers and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims present too many individualized inquiries to allow for manageable PAGA trial. *Id*.

2. Plaintiff's Counsel's Estimate of the Expense of Taking This Case To Trial Also Favors This Settlement

Plaintiff's counsel estimates that the cost of taking this case to trial will exceed $500,000 in attorney fees and costs alone. DS, ¶ 29.

3. Amount or Value Offered in Settlement.

As stated above, Defendants offer $180,000.00.The Parties have also agreed to a separate payment to Plaintiff of $10,000.00 for a general release of her individual (non-PAGA) claims pursuant to a separate confidential settlement agreement. DS, ¶ 30. Plaintiff will present the confidential agreement to the Court if requested. *Id.*

4. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

Plaintiff considered various sources of information in the lead-up to, during and after the mediation that enabled her to achieve the PAGA Settlement Agreement at issue. Among other things, Plaintiff considered the following:

- Defendants produced and Plaintiff reviewed her personnel file.
- Defendants produced and Plaintiff reviewed and analyzed time and payroll records for over 41 Aggrieved Employees.
- Plaintiff requested that Defendants produce any and all relevant policies regarding Plaintiff's claims and Defendants produced those policies in effect during the relevant time period.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA claims, claims for , and related claims.
- Plaintiff surveyed the outcomes of PAGA cases that went to trial or

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otherwise concluded before trial.

DS, ¶ 13.

5. The Experience and Views of Counsel Favor This Settlement

As Plaintiff's counsel explains in his declaration, this settlement makes good sense based on his experience litigating wage and hour actions, including claims seeking civil penalties under PAGA. DS, generally.

6. The Presence of a Governmental Participant Favors This Settlement.

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. By letters dated May 18, 2023, Plaintiff, on behalf of herself and other "aggrieved employees" gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. DS ¶ , **Exhibit** 3. Plaintiff also notified this LWDA of this settlement. DS ¶ 7, **Exhibit** 6.

7. The PAGA Settlement Agreement Is A Result of Extensive, Non-Collusive Arm's Length Negotiations Between The Parties.

The PAGA Settlement Agreement was reached only after litigation and arms' length negotiations between experienced attorneys, which included a full day mediation with Steven Pearl, a respected mediator. At all times, the negotiations were adversarial and contentious, although still professional in nature.

8. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A court has discretion under PAGA to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. DS, ¶ 25. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶ 25. For mediation purposes, Plaintiff's counsel estimated a maximum exposure of approximately $3,208,500.00 in civil penalties. This estimate did not take into account any of the risks discussed

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a. Risks Associated with Defendants' Financial Condition

Defendants' financial condition was the key factor in reaching this Settlement. DS, ¶ 16. Defendants produced the following financial records in settlement negotiations: tax returns, balance sheets, profit and loss statements, and bank statements for 2023, 2024, and 2025. Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may never recover the damages due to the risk of insolvency. *Id.* A very large civil penalties judgment would almost certainly put the Defendants out of business and/or would interfere with the company's

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There is a risk that Plaintiff's claim that Defendants did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. DS, ¶ 17. Off-the-clock claims are difficult where a Defendants requires in their written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. DS, ¶ 17. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of civil penalties seems unlikely with respect to this claim. *Id.*

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Generally, a court will not certify a class unless it can determine an appropriate methodology for all aggrieved employees. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees. DS, ¶ 18.

c. Risks Associated with Plaintiff's Claim That Defendants Failed To Provide All Meal Periods

There are risks to Plaintiff's claims that Defendants filed to provide all meal periods. DS, ¶ 19. Defendants contend that, to establish a violation of the meal period law, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiff, or any other employees, from taking their meal periods. DS, ¶ 19. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id*. The time records that comprise the random sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. *Id*. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the recoverable amount of civil penalties for unprovided meal periods would be substantially

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reduced at trial. *Id*.

d. Risks Associated with Plaintiff's Claim That Defendants Failed To Authorize or Permit Rest Breaks

There are risks to Plaintiff's claims that Defendants failed to authorize or permit rest breaks. DS, ¶ 20. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend it provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id*. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id*., *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

e. Risks Associated with Plaintiff's Claim That Defendants Failed To Indemnify for Expenses

There is a risk that the Court may consider Plaintiff's claim that Defendants failed to indemnify for business expenses to be individual in nature and thus decline to allow a trial on behalf of all aggrieved employees and the State. DS, ¶ 21. Plaintiff alleges that Defendants required Plaintiff and the Aggrieved Employees to use their personal items for work, including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. *Id*. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. *Id.*

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f. Risks Associated with Plaintiff's Claim That Defendants Failed To Issue Accurate and Complete Wage Statements

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS, ¶ 22.

Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id*. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226.

g. Risks Associated with Plaintiff's Claim That Defendants Failed To Timely Pay All Wages

Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good faith Defendants put forth will defeat this claim. DS, ¶ 23.

h. The Absence of Large Civil Penalty Awards under PAGA

The sole source of money recoverable for the Aggrieved Employees and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a minimum wage violation; (2) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered an overtime wage violation; (3) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a meal period violation; (4) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered a rest period violation; and (5) Every paycheck that Defendants issued to employees during the PAGA Period represents a pay period in which every Aggrieved Employee suffered an unreimbursed expense violation. There are no California state court decisions under the PAGA to date with substantial awards of civil penalties. Plaintiff's counsel is aware of only

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two significant awards under the PAGA in a contested proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.[3] DS, ¶ 24.

Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504* ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only $5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Under *Carrington*, assuming 4 violations for each pay period

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[3] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the Defendants' failures to comply with the requirements of California Labor Code section 226. On May 28, 2021, the United States Court of appeals for the Ninth Circuit overturned the decision finding that there is no technical wage statement violation for a failure to list the rates and hours of pay associated with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs*., No. 19-16184, 2021 U.S. App. LEXIS 16070 (9th Cir. May 28, 2021).

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for all 72 Aggrieved Employees, will result in a recovery of $34,280.00 (1,714 pay periods x 4 violations x $5 = $34,280.00). DS, ¶ 25.

Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA. DS, ¶ 22, Exs. 10-11. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff civil penalties totaling only $50.00. A similar result could occur here. DS, ¶ 26.

Defendants could also convince the Court to dismiss the claims due to unmanageability because determining whether each Aggrieved Employee worked off the clock or why each employee missed a meal or rest period would require separate mini-trials. *Id. See*, *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). The *Ortiz* court cited the "multitude of individualized assessments" that case would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating trial of plaintiff's claim from representative claims: "in light of the number of potential aggrieved employees, judicial economy favors deferring the representative portion of the PAGA claim"); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh'g denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under PAGA are manageable, and that courts

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may limit or strike unmanageable PAGA claims. DS, ¶ 27.

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the cost of pretrial and trial proceedings, the Court's discretion to lower the amount of penalties ultimately awarded, and the secured benefit to the Aggrieved Employees and the LWDA promoting compliance with the Labor Code. DS, ¶ 31.

i. The Risk That PAGA Claims Are Subject To Arbitration Agreements

The arbitration agreements entered into between Defendants on the one hand, and the Plaintiff and comparable workers, on the other, present a significant risk to the success of Plaintiff's representative litigation. DS ¶ 28. According to Defendants, the majority of the workers entered into arbitration agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential litigants from bringing PAGA actions against Defendants, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. *Id.* As such, by continuing to trial on representative claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreements. Also, because different defenses would apply to some workers and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims present too many individualized inquiries to allow for manageable PAGA trial. *Id.*

9. The Gross Settlement Amount Fairly, Reasonably, and Adequately Awards Shares To Aggrieved Employees Because Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendants employed them for during the PAGA Period. Agreement, ¶ 4.4. With a total of approximately 72 Aggrieved Employees, the average estimated individual Settlement Payment for each Aggrieved Employee is approximately $274.31 ($19,750.00 / 72 Aggrieved Employees). Although an average payment of $374.31 per Aggrieved Employee is not an enormous sum of money, it is an excellent result given the

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uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is not a restitution statute with a traditional damages provision designed to restore victims to the position they would have been in had the Labor Code violations not taken place. Rather, it is at best a punishment statute designed to reduce future Labor Code violations. It provides for civil penalties only. DS, ¶¶ 32 - 33.

<u>10.</u> **<u>Plaintiff's Counsel is Experienced in Similar Litigation.</u>**

Plaintiff's counsel have considerable experience in class actions and wage and hour litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. *See* DS, ¶¶ 10-12; Declaration of Walter L. Haines ("Haines Decl.") ¶¶ 1-5.

<u>11.</u> **<u>The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable and Should Be Approved.</u>**

"The law empowers the court to set the amount of fees independently without disapproving the entire settlement." *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 129. The benchmark for determining attorney fees is reasonableness. *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744. The determination of what constitutes a reasonable fee generally begins with the lodestar, i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154. The lodestar figure may then be adjusted, based on factors specific to the case, to fix the fee at the fair market value for the legal services provided. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.

Of the $180,000.00 Gross Settlement Amount, Plaintiff's counsel requests $60,000.00 (1/3 of the Gross Settlement Amount) in attorney's fees and up to $31,000.00 in litigation expenses. DS, ¶ 34; Agreement, ¶¶ 3.1-3.2.1. The written retainer agreement Plaintiff's counsel entered into with Plaintiff provided that her counsel may elect to recover either (a) statutorily awarded attorney fees or (b) up to 40% of any recovery. *Id.*

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for awarding

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attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern*, *Inc*. (2016) 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made clear that this cross-check is not required and approved one-third of the class action settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte, "*California courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. & Training Corp*., 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not "engage in a full-blown lodestar analysis when the primary basis remains the percentage method…" The lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage award." *Id. See also Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 ("Trial courts 'also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.'"[4] *Id.* (citing *Laffitte*)).

"[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*

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[4] The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 ["Citing unpublished federal opinions does not violate our rules."].) Like published decisions of the lower federal courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive authority. (*Western Heritage Ins*. *Co*. *v*. *Frances Todd*, *Inc*. (2019) 33 Cal.App.5th 976, 989, fn. 6.)

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(9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with Plaintiff's Counsel's experience in wage and hour class and PAGA settlements.

Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's Counsel's fee request of $60,000.00 (one-third of the Gross Settlement Amount) is fair and reasonable based on their lodestar as cross-checked against the percentage of the recovery. DS, ¶ 35, Ex. 11. Plaintiff's counsel's previous experience in litigating wage and hour class actions and the caliber of opposing counsel also support the reasonableness of the fee request. DS, ¶¶ 37-38.

In addition, Plaintiff's Counsel incurred substantial costs, $28,047.91 to date, including the costs of a mediator to aid in the representation of the Aggrieved Employees.[5] DS, ¶ 36, Ex. 12; Haines Decl. ¶ 11. Plaintiff's Counsel anticipate that Plaintiff will incur an additional $138.19 in costs, which consist of filing fees and attorney service fees for filing this motion and notice of entry of order. Plaintiff's Counsel anticipate that litigation costs will total approximately $28,186.10 through final accounting of the Settlement. *Id*. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. DS, ¶ 36, Ex. 12. Accordingly, they warrant the Court's approval.

12. The Proposed Administration Expenses Payment Are Fair and Reasonable and Should Be Approved.

With regard to the Administration Expenses Payment provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 39 - 40, Exs. 13-15. Thus, the Administration Expenses Payment provision should be given approval.

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[5] Plaintiff's counsel do not seek reimbursement for the wages they paid to the attorneys, paralegals, and legal assistants to aid in the representation of the Aggrieved Employees and the State. Plaintiff's Counsel bore these expenses over the lengthy since they began work on this matter without reimbursement.

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V. CONCLUSION

For the reasons stated above, this Court should grant the Plaintiff' Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: April 22, 2026

By: ______________________

DAVID G. SPIVAK,
Attorney for Plaintiff, TAYLOR SNOW, and all others similarly situated

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