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as aggrieved employees, and on behalf of all other aggrieved employees

[Additional Counsel listed on the next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ELIZABETH RUIZ and JOSPEH DURAN, as
aggrieved employees and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

v.

EDELBROCK FOUNDRY, LLC, a California
limited liability company; EMPLOYBRIDGE,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV19057

[Assigned for all purpose to the Hon. David S.
Cunningham in Dept. 11]

PAGA REPRESENTATIVE ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Filed concurrently with the Declarations of
Brandon M. Chang, David D. Bibiyan, Paul
K. Haines, Anthony Rogers, Elizabeth Ruiz
and Joseph W. Duran; [Proposed] Order;
and [Proposed] Judgment]**

HEARING INFORMATION

DATE: June 21, 2024

TIME: 3:00 p.m.

DEPT: 11

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13 Attorneys for Plaintiffs, ELIZABETH RUIZ and JOSEPH W. DURAN,
14 as aggrieved employees, and on behalf of all other aggrieved employees
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 21, 2024 at 3:00 p.m., or as soon thereafter as
3 plaintiffs Elizabeth Ruiz and Joseph W. Duran (collectively, “Plaintiffs”) may be heard in
4 Department 11 of the Los Angeles County Superior Court of California, Plaintiffs will, and hereby
5 do move for this Court for entry of an order approving the Joint Stipulation re: PAGA Settlement
6 (“Settlement,” “Agreement” or “Settlement Agreement”), under the Labor Code Private Attorneys
7 General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), entered into by and between
8 Plaintiffs, on one hand; and defendant Edelbrock Foundry, LLC (“Defendant”), on the other
9 hand, in the above-referenced action.

10 This motion is based upon this Notice, the attached Memorandum of Points and Authorities,
11 the accompanying Declarations of Brandon M. Chang, David D. Bibiyan, Paul K. Haines, Anthony
12 Rogers, Elizabeth Ruiz and Joseph W. Duran, exhibits attached thereto, the [Proposed] Order
13 Granting Approval of the PAGA Settlement, the [Proposed] Judgment, and any other evidence or
14 argument that may be presented at the hearing.

15

16 Dated: May 24, 2024

BIBIYAN LAW GROUP, P.C.

17

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By:



BRANDON M. CHANG

19

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Attorneys for Plaintiffs, ELIZABETH RUIZ and
JOSEPH W. DURAN, as aggrieved employees,
and on behalf of all other aggrieved employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Labor Code section 2699(l)(2) requires that the Superior Court review and approve any
4 settlement of a civil action filed pursuant to the Private Attorneys General Act of 2004, codified at
5 Labor Code section 2698, *et seq.*, (“PAGA”). Plaintiffs Elizabeth Ruiz and Joseph W. Duran
6 (collectively, “Plaintiffs”), on one hand; and defendant Edelbrock Foundry, LLC (“Defendant”), on
7 the other hand, have agreed to settle Plaintiff’s PAGA claims, fully resolving this case pursuant to
8 the Joint Stipulation re: PAGA Settlement¹ (“Settlement,” “Agreement” or “Settlement
9 Agreement”).

10 The approximately 1,030 “Aggrieved Employees” who are covered by the Settlement
11 Agreement are all current and former non-exempt, hourly paid employees of Defendant, either
12 directly or through any subsidiary, staffing agency, or professional employer organization, who were
13 employed by Defendant in California during the period from May 15, 2019 through the date of
14 approval of the PAGA Settlement (“PAGA Period”).

15 The Settlement Agreement provides that Defendant shall pay \$1,240,000.00² as Gross
16 Settlement Amount. From this amount, Plaintiffs request an award of \$6,550.00 in administration
17 costs, attorneys’ fees of one third (1/3) of the Gross Settlement Amount, which amounts to
18 \$413,333.33 (as the same may be escalated pursuant to the Settlement Agreement), reimbursement
19 of \$23,723.63 in litigation costs and service awards of \$7,500.00 to Plaintiff Elizabeth Ruiz and
20 Plaintiff Joseph W. Duran each, for a total of \$15,000.00 to Plaintiffs. Of the remaining sum
21

22 ¹ A true and correct copy of the Settlement Agreement is attached as Exhibit “1” to the Declaration of Brandon M.
23 Chang (“Chang Decl.”) for the Court’s convenience.

24 ² Defendant represents that there were no more than 55,670 Pay Periods worked by Aggrieved Employees during the
25 PAGA Period. In the event the number of Pay Periods worked during the PAGA Period increased by more than 10% or
26 5,567 Pay Periods (i.e., if there were more than 61,237 Pay Periods worked during the PAGA Period), Defendant may
27 elect either to: (1) have the Gross Settlement Amount be increased by the number of Pay Periods greater than 61,237
28 multiplied by the Pay Period Value; or (2) have the PAGA Period end on the date on which the number of Pay Periods
reaches 61,237. The Pay Period Value would be calculated by dividing the originally agreed-upon Gross Settlement
Amount (\$1,240,000.00) by 55,670. The Parties agreed that the Pay Period Value and the Settlement amounts to \$22.27
(\$1,240,000.00 Gross Settlement Amount / 55,670 Pay Periods). Thus, for example, should there be 62,000 Pay Periods
worked by Aggrieved Employees in the PAGA Period and Defendant elects to proceed with the first of these two
choices, then the Gross Settlement Amount would be increased by \$16,992.01 ((62,000 Pay Periods – 61,237 Pay
Periods) x \$22.27/Pay Period).

1 (hereinafter, the “PAGA Penalties”), seventy-five percent (75%) of which shall be paid to the
2 California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%)
3 of which will be paid to Aggrieved Employees. These penalties are genuine and meaningful and
4 fulfill PAGA’s underlying purpose to benefit the public. Accordingly, Plaintiffs request that the
5 Court approve the Settlement as such awards are reasonable and warrant approval.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 **A. The Parties**

8 Plaintiff Elizabeth Ruiz was employed by Defendant in its core finisher department, with
9 duties that included, but not limited to, cleaning manufactured aluminum and metal parts, removing
10 investment materials, parting lines or other irregularities such as core vent marks, ad box wear
11 marks, mud irregularities that appear in casting, and inspecting the core, within California from
12 around June 5, 2018 through around May 16, 2019.

13 Plaintiff Joseph W. Duran was employed by Defendant as a water pump cell machine
14 operator, with duties that included, but not limited to, loading and unloading the water pump,
15 verifying torque sequence, deburring and pressing the start button and e-stop button on the water
16 pump, and operating MAKINO machines, within California from approximately 2020.

17 Based on information provided by Defendant, there are approximately 1,030 Aggrieved
18 Employees in the PAGA Period.

19 **B. Procedural History**

20 On May 15, 2020, plaintiff Elizabeth Ruiz filed with the LWDA and served on Defendant
21 and EmployBridge, LLC, a notice under Labor Code section 2699.3, stating she intended to serve
22 as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the
23 “Ruiz PAGA Notice”).³

24 On March 18, 2020, plaintiff Elizabeth Ruiz filed a putative wage-and-hour class action in
25 the Los Angeles County Superior Court, Case No. 20STCV19057, alleging Defendant and
26 EmployBridge, LLC: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed
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28 ³ A true and correct copy of the Ruiz PAGA Notice is attached as Exhibit “3” to the Declaration of Brandon M. Chang.

1 to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or
2 compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6)
3 failed to provide accurate and compliant wage statements; (7) failed to indemnify for business
4 expenses; and (8) engaged in unfair competition (the “Ruiz Action”).

5 On October 2, 2020, plaintiff Elizabeth Ruiz filed a First Amended Complaint in the Ruiz
6 Action, adding causes of action against Defendant and EmployBridge, LLC, seeking civil penalties
7 under PAGA for the Labor Code violations alleged in the Ruiz PAGA Notice.

8 On August 28, 2023, plaintiff Joseph W. Duran filed with the LWDA and served on
9 Defendant a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the
10 LWDA to recover civil penalties for various alleged Labor Code violations (the “Duran PAGA
11 Notice”).⁴ The Ruiz PAGA Notice and the Duran PAGA Notice are hereinafter referred to as the
12 “PAGA Notices.”

13 Also, on August 28, 2023, plaintiff Joseph W. Duran filed a putative wage-and-hour class
14 action in the Riverside County Superior Court, Case No. CVRI2304519, alleging Defendant: (1)
15 failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods
16 or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
17 (5) failed to indemnify for business expenses; (6) failed to provide accurate and compliant wage
18 statements; and (7) engaged in unfair competition (the “Duran Action”).

19 On October 10, 2023, defendant EmployBridge, LLC, was dismissed from the Ruiz Action
20 without prejudice.

21 On November 13, 2023, plaintiff Joseph W. Duran filed a First Amended Complaint in the
22 Duran Action, adding causes of action against Defendant seeking civil penalties under PAGA for
23 the Labor Code violations alleged in the Duran PAGA Notice.

24 On February 8, 2024, the Parties participated in a full-day mediation before Jeff Krivis,
25 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
26 matters, which led to this Agreement to settle the Action. As part of the Settlement, the Parties
27

28 ⁴ A true and correct copy of the Duran PAGA Notice is attached as Exhibit “A” to the Declaration of Paul K. Haines.

1 agreed to stipulate to plaintiff Elizabeth Ruiz's filing of a Second Amended Complaint in the Ruiz
2 Action, adding the PAGA claims brought in the Duran Action and plaintiff Joseph W. Duran as a
3 named plaintiff, and plaintiff Joseph W. Duran's filing of a request for dismissal of the Duran
4 Action, thereby effectively consolidating the Duran Action with the Ruiz Action (the "Action").
5 The Second Amended Complaint in the Ruiz Action will be the operative complaint in the Action
6 (the "Operative Complaint").

7 Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and payroll
8 records for approximately 20% of the estimated 1,030 Aggrieved Employees' during the PAGA
9 Period; (2) Defendant's applicable wage and hour policy documents; (3) all documents concerning
10 Plaintiffs available to Defendant; and (4) data points, including the number of Aggrieved
11 Employees, the number of pay periods, and the number of Aggrieved Employees who were
12 separated from employment with Defendant during the PAGA Period.

13 PAGA Counsel have conducted significant investigation of the law and facts relating to the
14 claims asserted in the Action, and have concluded that the Settlement set forth herein is fair,
15 reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent
16 permitted by law, the State of California, taking into account the sharply contested issues involved,
17 the expense and time necessary to litigate the Action through trial and any appeals, the risks and
18 costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the
19 information learned through informal discovery regarding Plaintiffs' allegations, and the substantial
20 benefits to be received by Aggrieved Employees.

21 Defendant has concluded that, because of the substantial expense of defending against the
22 Action, the length of time necessary to resolve the issues presented herein, the inconvenience
23 involved and the concomitant disruption to their business operations, it is in their best interests to
24 accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted
25 against them in the Action. However, Defendant nevertheless desires to settle the Action for the
26 purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the
27 purpose of putting to rest the controversies engendered by the Action.

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1 **C. Discovery and Investigation**

2 In the leadup to mediation, PAGA Counsel investigated Plaintiffs' claims, performed legal
3 research regarding Defendant's defenses and engaged in informal discovery. During that time,
4 Defendant produced: (1) time and payroll records for approximately 20% of the estimated 1,030
5 Aggrieved Employees' during the PAGA Period; (2) Defendant's applicable wage and hour policy
6 documents; (3) all documents concerning Plaintiffs' available to Defendant; and (4) data points,
7 including the number of Aggrieved Employees, the number of pay periods, and the number of
8 Aggrieved Employees who were separated from employment with Defendant during the PAGA
9 Period.

10 This yielded sufficient information to determine, for the PAGA Period, the total number of
11 Aggrieved Employees, the total number of shifts and PAGA pay periods, the length of shifts for all
12 Aggrieved Employees, average rates of pay, detailed analysis of alleged meal and rest periods
13 violations, and the policies and practices in play during the PAGA Period. The documents and
14 information produced enabled PAGA Counsel to analyze the law and facts relating to Plaintiffs'
15 claims. PAGA Counsel also retained an expert data consultant to review and analyze the time and
16 payroll records and prepare a model setting forth Defendant's potential exposure for civil penalties
17 for use in the mediation. The documents and information shared also enabled Plaintiffs to evaluate
18 the potential hurdles to recovery, including in connection with the merits of the claims and
19 manageability. Based on this investigation and discovery, Plaintiffs were able to act intelligently
20 and effectively in negotiating the proposed Settlement.

21 **D. Mediation**

22 On February 8, 2024, the Parties participated in a full-day mediation before Jeff Krivis,
23 Esquire, a well-regarded mediator experienced in mediating complex labor and employment
24 matters, which led to this Agreement to settle the Action.

25 The Settlement negotiations were at arm's length and, although conducted in a professional
26 manner, were adversarial. The Parties went into mediation willing to explore the potential for a
27 settlement of the Action, but each side was also prepared to litigate its position through trial and
28 appeal if a settlement had not been reached. After several exchanges of draft settlement agreements,

1 the Parties fully executed the Settlement Agreement, a copy of which is attached to the Declaration
2 of Brandon M. Chang as Exhibit “1” thereto.

3 Based on Plaintiffs’ investigation, informal discovery and evaluation of Plaintiffs’ claims,
4 Defendant’s defenses regarding the merits of the claims and the manageability of a trial thereon,
5 Defendant’s potential exposure, the expense and time necessary to pursue this action through trial,
6 the risks and costs of further prosecution of this action, the uncertainties of complex litigation and
7 developing law, and the benefits that will accrue to the LWDA and the Aggrieved Employees, the
8 Parties and their counsel believe that a settlement on the terms set forth herein is fair, reasonable,
9 adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA and Defendant.

10 **III. SUMMARY OF SETTLEMENT**

11 **A. The Aggrieved Employees**

12 The “Aggrieved Employees” who are covered by the Settlement Agreement are all current
13 and former non-exempt, hourly paid employees of Defendant, either directly or through any
14 subsidiary, staffing agency, or professional employer organization, who were employed by
15 Defendant in California during the period from May 15, 2019 through the date of approval of the
16 PAGA Settlement (“PAGA Period”). Based on information provided by Defendant prior to
17 mediation, Plaintiffs believe there are approximately 1,030 Aggrieved Employees in the Settlement
18 Period.

19 **B. Settlement Terms**

20 The Settlement provides for a Gross Settlement Amount (“GSA”) of \$1,240,000.00, as the
21 same may be escalated pursuant to the Parties’ Settlement Agreement, to be paid by Defendant. The
22 GSA shall be allocated as follows:

23 **1. PAGA Penalties**

24 The amount of the GSA that remains after deducting the PAGA Representatives Service
25 Payments, Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Counsel
26 Litigation Expenses Payment will be designated as PAGA Penalties. If the Court approves those
27 allocations, the total estimated amount of the PAGA Penalties is **\$781,393.04** (as the same may be
28 escalated pursuant to the Settlement Agreement). Pursuant to the Settlement Agreement and Labor

1 Code section 2699(i), 75% of the PAGA Penalties, or **\$583,044.78** (as the same may be escalated
2 pursuant to the Settlement Agreement), will be paid to the LWDA, and the remaining 25%, or
3 **\$195,348.26**, of the PAGA Penalties (as the same may be escalated pursuant to the Settlement
4 Agreement) will be paid to the Aggrieved Employees on a *pro rata* basis using their respective
5 number of PAGA Pay Periods⁵ worked. The estimated average payment to Aggrieved Employees
6 is approximately **\$189.66** (\$195,348.26 / 1030 Aggrieved Employees).

7 **2. PAGA Representatives Services Payments**

8 A PAGA Representative Service Payment in the amount of up to \$7,500.00 will be paid to
9 each plaintiff, for a total of \$15,000.00 to Plaintiffs, for their services on behalf of the State of
10 California (“the State”) and Aggrieved Employees, which included assisting PAGA Counsel with
11 the investigation, litigation, and settlement, as well as participation in mediation.

12 **3. Settlement Administrator and Expenses Payment**

13 The Parties have agreed that the Settlement Administrator will be ILYM Group, Inc. The
14 cost of administering the Settlement, including, but not limited to, mailing the Individual PAGA
15 Payments to the Aggrieved Employees, shall not exceed \$6,550.00 and will be paid to the Settlement
16 Administrator from the Gross Settlement Amount.

17 **4. PAGA Counsel Fees and Litigation Expenses Payments**

18 An award of attorneys’ fees to PAGA Counsel in an amount not to exceed one third (1/3) of
19 the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, will
20 be \$413,333.33, as well as reimbursement of litigation expenses reasonably incurred in an amount
21 of \$23,723.63.

22 **5. Settlement Administration**

23 Within 14 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved
24 Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. “Aggrieved
25 Employee Data” means Aggrieved Employee identifying information in Defendant’s possession
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27 ⁵ “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was employed by Defendant for at
28 least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1 including the Aggrieved Employee's name, last-known mailing address, and number of PAGA Pay
2 Periods.

3 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
4 Administrator no later than thirty (30) calendar days after the Effective Date. Within 14 days after
5 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual
6 PAGA Payments, the LWDA PAGA Payment, PAGA Representatives Services Payments,
7 Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Counsel Litigation
8 Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel
9 Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

16 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and
17 cancelled after the void date, the Administrator shall transmit the funds represented by such checks
18 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

19 **6. Taxes**

20 All settlement payments to Aggrieved Employees will be treated as miscellaneous income
21 for which an IRS Form 1099 will be issued. Other than the reporting requirements set forth in the
22 Agreement, the Aggrieved Employees shall be responsible for the reporting and payment of any
23 federal, state, and/or local income or other tax or any other withholdings, if any, on any of the
24 payments made pursuant to the Agreement. The Parties do not expect there to be any employer side
25 taxes arising from the Settlement because this a settlement of a representative action for civil
26 penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount, such
27 taxes will be funded by the Gross Settlement Amount.

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1 **7. Release**

2 Effective on the date when Defendant fully funds the entire Gross Settlement Amount,
3 Plaintiffs and Aggrieved Employees are deemed to release, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
5 and assigns, the Released Parties from all claims, rights, demands, liabilities and causes of action
6 that arose during the PAGA Period for civil penalties under PAGA that were alleged, or reasonably
7 could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the
8 PAGA Notices, whether or not specifically delineated as a claim or cause of action, including,
9 claims for PAGA penalties relating to Defendant’s alleged failure to pay overtime compensation,
10 failure to provide minimum wages or pay for all hours worked, failure to provide meal and/or rest
11 periods, failure to pay meal or rest period penalties, failure to reimburse all business-related
12 expenses, failure to provide and maintain accurate, itemized wage statements, and claims arising
13 under or relating to the alleged violations of California Labor Code Sections 200, 201, 201.1, 201.3,
14 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 222, 222.5, 223, 224, 225, 225.5, 226,
15 226.3, 226.7, 226.8, 227.3, 246, 256, 432, 450 510, 511 512, 516, 550, 552, 558, 1174, 1174.5,
16 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.1, 1198.5, 2698 *et seq.* 2699 *et seq.*, 2800, 2802,
17 and 2810.5, and applicable California Industrial Welfare Commission (“IWC”) Wage Orders,
18 including but not limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040 (“PAGA
19 Released Claims”), against the Released Parties. Upon approval of the Settlement, Plaintiffs and the
20 Aggrieved Employees will be forever barred from pursuing against the Released Parties any and all
21 claims for civil penalties under PAGA based upon alleged violations of the California Labor Code,
22 Wage Orders, regulations, and/or other provisions of the law alleged or that could have been alleged
23 to have been violated in, or reasonably related to, the Action.

24 **8. Escalator Provision**

25 Defendant represents that there were no more than 55,670 Pay Periods worked by Aggrieved
26 Employees during the PAGA Period. In the event the number of Pay Periods worked during the
27 PAGA Period increased by more than 10% or 5,567 Pay Periods (i.e., if there were more than 61,237
28 Pay Periods worked during the PAGA Period), Defendant may elect either to: (1) have the Gross

1 Settlement Amount be increased by the number of Pay Periods greater than 61,237 multiplied by
2 the Pay Period Value; or (2) have the PAGA Period end on the date on which the number of Pay
3 Periods reaches 61,237. The Pay Period Value would be calculated by dividing the originally
4 agreed-upon Gross Settlement Amount (\$1,240,000.00) by 55,670. The Parties agreed that the Pay
5 Period Value and the Settlement amounts to \$22.27 (\$1,240,000.00 Gross Settlement Amount /
6 55,670 Pay Periods). Thus, for example, should there be 62,000 Pay Periods worked by Aggrieved
7 Employees in the PAGA Period and Defendant elects to proceed with the first of these two choices,
8 then the Gross Settlement Amount would be increased by \$16,992.01 ((62,000 Pay Periods – 61,237
9 Pay Periods) x \$22.27/Pay Period).

10 **9. Uncashed Checks**

11 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and
12 cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit
13 the funds represented by such checks to the California Controller's Unclaimed Property Fund in the
14 name of the Aggrieved Employee.

15 **IV. ARGUMENT**

16 **A. The PAGA Penalties Secured by the Settlement are Genuine and Meaningful,** 17 **and Fulfill PAGA's Underlying Purpose to Benefit the Public**

18 The PAGA statute specifically provides that “[t]he superior court shall review and approve
19 any settlement of any civil action filed pursuant to this part.” (Lab. Code, § 2699, subd. (l)(2).) The
20 statute, however, does not require a two-step process or otherwise mimic the class action approval
21 requirements when the parties reach a settlement only as to PAGA civil penalties. (*Salazar v. Sysco*
22 *Central Cal., Inc.* (E.D. Cal. Feb. 2, 2017) 2017 WL 1135801, *2 [rejecting the application of class
23 action settlement rules and procedures for PAGA settlement approval]). In the absence of an
24 explicit statutory requirement, the LWDA has provided guidance, explaining that courts should
25 evaluate settlements of PAGA claims based on whether “the relief provided for under the PAGA
26 [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
27 public.” (*O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133.). Courts
28 defer to the agency's interpretation of a statute where authority has been delegated to that agency.

1 (*New Cingular Wireless PCS, LLC v. Pub. Utilities Comm’n* (2016) 246 Cal.App.4th 784, 807.)
2 When evaluating a PAGA settlement, the Court should analyze whether the amount of civil penalties
3 obtained is “genuine and meaningful” in light of the PAGA’s statutory purpose.

4 The California Legislature enacted PAGA to “augment the limited enforcement capability
5 of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the
6 Agency.” (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 383.). This statute
7 authorizes an employee to bring an action for “civil penalties on behalf of the state against his or
8 her employer for Labor Code violations committed against the employee and fellow employees.”
9 (*Id.* at 360.). An action under PAGA to recover civil penalties “is essentially a law enforcement
10 action designed to protect the public and not benefit private parties.” (*Id.* at 381.). Fundamentally,
11 “a PAGA action is a statutory action in which the penalties available are measured by the number
12 of Labor Code violations committed by the employer.” (*Sakkab v. Luxottica Retail North America,*
13 *Inc.* (9th Cir. 2015) 803 F.3d 425, 435.) “As the state’s proxy, an employee-plaintiff may obtain
14 civil penalties for violations committed against absent employees [citation], just as the state could
15 if it brought an enforcement action directly.” (*Id.*)

16 Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered go
17 to the State, while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699,
18 subd. (i).) The PAGA action is one of the “primary mechanisms for enforcing the Labor Code.”
19 (*Iskanian*, 59 Cal.4th at 383.) As the State’s proxy or agent, “the employee plaintiff represents the
20 same legal right and interest as state labor law enforcement agencies- namely, recovery of civil
21 penalties that otherwise would have been assessed by and collected by the [LWDA].” (*Id.*) “[A]n
22 aggrieved employee’s action under [PAGA] functions as a substitute for an action brought by the
23 government itself.” (*Id.*) The goal of PAGA is to impose civil penalties for Labor Code violations
24 “significant enough to deter violations.” (*Id.* at 379.)

25 Thus, a PAGA action is “fundamentally different from a class action.” (*Baumann v. Chase*
26 *Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 [“These differences stem from the central
27 nature of PAGA. PAGA plaintiffs are private attorneys general who, stepping into the shoes of the
28 LWDA, bring claims on behalf of the state agency.”]. The PAGA statute expressly distinguishes

1 and preserves the right of employees to separately (or concurrently) pursue their own causes of
2 action against their employers and to recover other available federal and state remedies. (Lab. Code,
3 § 2699, subd. (g)(1); see *Baumann*, 747 F.3d at 1123 [explaining the differences between the finality
4 in class action judgments and the limited res judicata effect of PAGA judgments].) “Unlike a class
5 action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to
6 incentivize private parties to recover civil penalties for the government that otherwise may not have
7 been assessed and collected by overburdened state enforcement agencies.” (*McKenzie v. Federal*
8 *Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1233.) PAGA penalties do not seek damages
9 that are compensatory in nature. (*ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188.)

10 Here, the Settlement penalizes Defendant for its alleged violation of California’s labor laws,
11 provides a significant benefit of \$781,393.04 (as the same may be escalated pursuant to the
12 Settlement) to the State and also provides relief to the Aggrieved Employees that is genuine and
13 meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the
14 Gross Settlement Amount of \$1,240,000.00, as the same may be escalated pursuant to the Settlement
15 Agreement, is significant enough to deter Defendant from future violations. Accordingly, the
16 Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the
17 public.

18 **B. The Settlement is Reasonable Given the Risks of Further Litigation**

19 In assessing whether the amount in civil penalties is genuine and meaningful, the Court may
20 balance the amount in penalties with the risks of further litigation. Here, Plaintiffs obtained a
21 meaningful amount in civil penalties despite facing significant challenges had the litigation
22 continued.

23 The potential claims for penalties include, failure to pay all wages due, failure to provide
24 minimum wages or pay for all hours worked, failure to pay overtime compensation, failure to
25 provide meal and/or rest periods, failure to pay proper meal or rest period premiums, failure to
26 provide and maintain accurate itemized wage statements, failure to timely pay wages due at
27 separation of employment, and failure to reimburse all business-related expenses.

28 ///

Moreover, only initial violation rates were used in calculating potential penalties as, until “notified that it is violating a Labor Code provision... the employer cannot be presumed to be aware that its continuing underpayment of employees is a “violation” subject to penalties.” (*Amaral v. Cintas Corp. No. 2 [Amaral]* (2008) 163 Cal. App. 4th 1157, 1209.) Thus, subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. (*Patel v. Nike Retail Servs., Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 1032, 1042; *accord Amaral*, 163 Cal. App. 4th at 1209 [only “after the employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished... at twice the rate of penalties... that were imposed for the initial violation”].) Because in this instance there was no evidence that Defendant was provided notice that they were in violation of the Labor Code, initial violation rates were used to calculate penalties.

Based on the records produced by Defendant, Plaintiffs understood there to be 55,670 pay periods in the PAGA Period. While PAGA Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, PAGA Counsel believe one reasonable calculation of Defendant’s maximum exposure in PAGA penalties are as follows:

1. Overtime Wage Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$2,783,500. (55,670 pay periods x \$50.)
2. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$5,567,000. (55,670 pay periods x \$100.)
3. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt

employee in the PAGA Period, this amounts to a maximum exposure of \$2,783,500.
(55,670 pay periods x \$50.)

4. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$2,783,500.
(55,670 pay periods x \$50.)

5. Waiting Time Penalties: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include be just one violation per employee. PAGA Counsel understood at mediation through the documents provided by Defendant that there were approximately 813 terminated Aggrieved Employees during the PAGA Period. This amounts to a maximum exposure of \$81,300.
(813 terminated Aggrieved Employees x \$100.)

6. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of \$5,567,000. (55,670 pay periods x \$100.)

In sum, PAGA Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be approximately \$19,565,800.

On the other hand, PAGA Counsel understand from the mediator and the mediation process that Defendant argued the following in connection with this claim:

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1 Defendant contends that no PAGA penalties are likely to be awarded and, even if they were,
2 the maximum exposure calculated by Plaintiffs is vastly overstated. First, Defendant defends that
3 PAGA penalties cannot and should not be stacked and that, even if they could, very few Courts have
4 ever exercised discretion to stack them. Second, Defendant denies that a violation for each pay
5 period can be established. Third, Defendant contends that a Court is unlikely to exercise its
6 discretion to award civil penalties under PAGA where, as here, Defendant contends there is no
7 conduct shown by Plaintiffs that would show any Labor Code violations by Defendant, if any, is
8 knowing and intentional that would justify PAGA penalties. Finally, Defendant asserts that
9 individualized issues predominate the PAGA claims, making the claims unmanageable for trial
10 pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 [*Wesson*].
11 Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to
12 award any penalties under PAGA.

13 While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to
14 each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved Employees
15 were subjected to, *inter alia*, not being paid for all time under Defendant's control, unlawful meal
16 and rest break policies, and were denied meal and rest break premiums. Defendant refutes these
17 contentions, claiming, for example, that everyone was paid for all time worked, they authorized and
18 permitted rest breaks, and provided meal periods.

19 Plaintiffs also considered the fact that continued litigation would be expensive, time-
20 consuming and an uncertain proposition, involving a trial and possible appeals, and would delay
21 any recovery to the State and the Aggrieved Employees. There is also a substantial risk that the
22 Court would reduce the award even if Plaintiffs are successful or otherwise exercise its discretion
23 not to award penalties at all even if Labor Code violations are found. In contrast, if the Court
24 approves the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of
25 an unfavorable judgment. And, in light of the Court's ruling in *Wesson*, Plaintiffs had to account for
26 the real possibility that a Court determines that some or all of the theories advanced by Plaintiffs in
27 this Action would not lend themselves to a manageable trial, despite the fact Plaintiffs deny that
28 there is a manageability requirement under PAGA. (*See, e.g., Estrada v. Royalty Carpet Mills,*

1 (2022) 76 Cal.App.5th 685, 709-710). Plaintiffs objectively and knowledgably balanced the
2 strengths and weaknesses of their claims, the likelihood of reaching a trial, and the likelihood of
3 success at trial against the risk of continued litigation and was able to determine a realistic range of
4 settlement recovery for PAGA penalties.

5 As such, PAGA Counsel believe a 50% discount of this maximum exposure, resulting in
6 **\$9,782,900 to be a reasonable estimate of the likelihood of what Plaintiff may potentially**
7 **recover at trial for PAGA penalties** (\$19,565,800 x .5). In all, PAGA Counsel obtained a Gross
8 Settlement Amount of **\$1,240,000.00**.

9 Thus, when the risks of litigation, including, without limitation, the burdens of proof
10 necessary to establish liability, the mixed case law on manageability, as well as the probability of
11 appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the
12 best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives
13 by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor
14 Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or
15 confiscatory." (Lab. Code, § 2699, subd. (e)(2); *Iskanian*, 59 Cal.4th at 384.)

16 **C. PAGA Counsel's Requested Fees and Costs are Reasonable**

17 PAGA Counsel are entitled to reasonable attorneys' fees pursuant to Labor Code section
18 2699(g)(1) which provides that "[a]ny employee who prevails in any action shall be entitled to an
19 award of reasonable attorney's fees and costs." (Lab. Code, § 2699, subd. (g)(1); see also *Gouskos*
20 *v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 765 [holding that attorneys' fees to
21 prevailing party are mandatory when the statute uses the word "shall"].) Additionally, PAGA
22 Counsel are entitled to fees based on the contingent agreement with its clients. It is undisputed that
23 Plaintiffs are the prevailing party. (See *Graciano v. Robinson Ford Sales, Inc.* (2006) 144
24 Cal.App.4th 140, 153, internal citations omitted ["[P]laintiffs may be considered 'prevailing parties'
25 for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves
26 some of the benefit the parties sought in bringing suit."])

27 Accordingly, Plaintiffs are entitled to recover attorneys' fees and costs. Plaintiffs requests a
28 fee of one third (1/3) of the Gross Settlement Amount, which, unless and until escalated pursuant to

1 the Parties' Settlement Agreement, amounts to \$413,333.33, is reasonable, is well within the range
2 of fees generally sought and approved in other class and representative cases, and is also reasonable
3 based on PAGA Counsel's lodestar.

4 **1. An Award of Fees Based on a Percentage of the Common Fund is**
5 **Appropriate and Reasonable**

6 The percentage of attorneys' fees set forth in the Settlement (*i.e.*, one third of the GSA) is
7 reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in
8 collective actions, depending on the circumstances of the case. (Newberg on Class Actions, 4th Ed.
9 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage
10 of recovery for attorneys' fees is properly awarded on the basis of the total recovery. (*Boeing v. Van*
11 *Gemert* (1980) 444 U.S. 472, 480-481; *see also In re Consumer Privacy Cases* (2009) 175
12 Cal.App.4th 545, 558, fn.13, emphasis added ["Empirical studies show that, regardless whether the
13 percentage method or the lodestar method is used, fee awards in class actions average around *one-*
14 *third* of the recovery"].)

15 Here, the requested fee is consistent with the fees awarded in other PAGA settlements
16 approved by California courts. (*See, e.g., Ortiz v. Morgan Stanley Smith Barney, LLC* San Francisco
17 County Superior Court, Case No. CGC-17-560139 [awarding attorneys' fees of one-third under
18 percentage method]; *Chavez v. Saticoy Lemon Ass'n* Case No. 56-2015-00468600-CU-OE-VTA,
19 2015 WL 5561118, Ventura County Superior Court Aug. 29, 2015) [approving attorneys' fees of
20 one-third of PAGA settlement fund]; *Tocci v. Yard House Northridge LLC*, Los Angeles County
21 Superior Court Case No. BC625604 [same]; *Jozami v. Twilio Inc.*, San Francisco County Superior
22 Court Case No. CGC-18-566356 [same].)

23 PAGA Counsel invested time and resources into litigating this Action, with over \$23,700 of
24 costs to date and counting deferred to the end of the case and entirely contingent on the outcome
25 which, as set forth above, the recovery of which was far from certain with much of the litigation
26 still potentially pending. It has been a long-recognized principle that an attorney merits a
27 significantly larger fee when the compensation is contingent, rather than being fixed on a time or
28 contractual basis. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) During the

1 period that this Action has been pending, PAGA Counsel have advanced all expenses, and have not
2 received any compensation for prosecuting the Action on behalf of the State and other Aggrieved
3 Employees.

4 The significant outlay of monetary and personnel resources has been completely at risk and
5 wholly dependent upon obtaining a substantial settlement or the imposition of civil penalties at trial.
6 PAGA Counsel should not be penalized with a lower fee for settling the case prior to trial, because
7 the percentage of the fund method “encourages early settlement, which avoids protracted litigation.”
8 (*Laffitte v. Robert Half Int’l* (2016) 1 Cal.5th 480, 489.) Thus, the requested award of attorneys’ fees
9 is reasonable under the percentage of the fund method.

10 **2. The Requested Fees are Also Reasonable Under a Lodestar Crosscheck**

11 To measure reasonableness, the Court may cross-check the percentage of recovery against
12 PAGA Counsel’s lodestar. (*Laffitte*, 1 Cal.5th at 506; *see Privacy Cases*, 175 Cal.App.4th at 556-
13 58.) PAGA Counsel’s lodestar is based upon a total of 561.5 hours at customary hourly rates.

14 Specifically, pursuant to the Declaration of David D. Bibiyan, David D. Bibiyan billed 121.3
15 hours at his hourly rate of \$1,000. Jeffrey D. Klein billed 32.8 hours at his hourly rate of \$900. Bijan
16 Mohseni billed 7.5 hours at his hourly rate of \$725. Vedang J. Patel billed 43.2 hours at his hourly
17 rate of \$600. Brandon Chang billed 21.7 hours at his hourly rate of \$500. Joshua Shirian billed 74.4
18 hours at his hourly rate of \$475. Ariella Mehrzadi billed 55.0 hours at her hourly rate of \$425. Sarah
19 Ehsani-Nia billed 73.7 hours at her hourly rate of \$400. Paralegals billed 7.5 hours at \$175 per hour.
20 Finally, legal assistants billed 22.6 hours at \$75 per hour. Cumulatively, this amounts to a total
21 lodestar of \$284,230 for Bibiyan Law Group, P.C.

22 Pursuant to the Declaration of Paul K. Haines, Paul K. Haines billed 32.6 hours at his hourly
23 rate of \$850. Sean M. Blakely billed 41.5 hours at his hourly rate of \$750. Aden M. Khachadoorian
24 billed 22.1 hours at his hourly rate of \$400. Paralegals billed 5.6 hours at their hourly rate of \$175.
25 Cumulatively, this amounts to a total lodestar of \$68,655 for Haines Law Group, APC.

26 In total, PAGA Counsel have expended 561.5 hours, and at their hourly rates, this results in
27 a total lodestar amount of \$352,885. Plaintiffs request attorneys’ fees of only \$413,333.33.

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1 **3. PAGA Counsel’s Hours are Reasonable**

2 In determining whether the number of hours expended on the litigation was reasonable, the
3 court must determine that “the time spent was reasonably necessary and that counsel made ‘a good
4 faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise
5 unnecessary.’” (*Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 fn. 8.) The court
6 “should defer to the winning lawyer’s professional judgment as to how much time he was required
7 to spend on the case.” (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 [noting
8 that “[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of
9 inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”].
10 “Testimony of an attorney as to the number of hours worked on a particular case is sufficient
11 evidence to support an award of attorney fees, even in the absence of detailed time records” (*Martino*
12 *v. Denevi* (1986) 182 Cal.App.3d 553, 559, citations omitted; *see also Wershba*, 91 Cal.App.4th at
13 255 [“California permits fee awards in the absence of detailed time sheets”]; *Laffitte*, 1 Cal.5th at
14 505 [trial court properly exercised its discretion to perform the lodestar cross-check “using counsel
15 declarations summarizing overall time spent rather than demanding and scrutinizing daily time
16 sheets in which the work performed was broken down by individual task”].)

17 PAGA Counsel have spent over 560 hours litigating this Action to bring it to resolution, not
18 including time which will be expended monitoring the administration of the settlement and
19 distribution of funds to Aggrieved Employees. The efforts expended by PAGA Counsel to achieve
20 this result include, but are not limited to, the following:

- 21 • The investigation of the matter, including meeting with Plaintiff, reviewing
22 policies provided by Plaintiff, review of documents in Plaintiff’s possession,
23 review and analysis of Plaintiff’s personnel file, and exploring Defendant’s
24 corporate structure to determine whether any other individuals or entities should
25 be named in the litigation;
- 26 • Researching the dockets for other cases filed against Defendant, determining
27 whether they named all allegedly culpable defendants and included all theories
28 available;

- Compliance with prerequisites in connection with PAGA;
- Filing the complaints in the Ruiz Action and Duran Action, including the initial complaints and the First Amended Complaints;
- Reviewing and analyzing Defendant's and EmployBridge, LLC's Answers to Plaintiff Elizabeth Ruiz's Complaint and Defendant's Answer to Plaintiff Duran's Complaint;
- Review and analysis of the Court's Minute Orders, attention to scheduling and delegation of actions in light thereof, drafting and filing Case Management Statements and preparation for appearance at the Case Management Conferences;
- Meeting and conferring with counsel for Defendant, and drafting and filing Joint Reports in advance of the conferences and hearings held by the Court, and preparation and attendance of the same;
- Propounding of formal discovery, meeting and conferring thereon for further responses, as well as the receipt and review of supplemental responses and further supplemental responses to discovery;
- Responding to informal discovery, as well as meeting and conferring with counsel for Defendant and EmployBridge, LLC, in connection with those responses;
- Negotiating, drafting, and reviewing various Joint Stipulations with co-counsel and counsel for Defendant, including a Joint Stipulation Lifting the Stay to Request Dismissal of EmployBridge, LLC, without prejudice, and a potential Joint Stipulation and Protective Order for the production of Confidential Materials;
- Meeting and conferring with Defendant regarding an Informal Discovery Conference, drafting and filing Plaintiff's Statement Re: Informal Discovery Conference, and reviewing and analyzing Defendant's and EmployBridge, LLC's Statements, and preparation for and attendance at the Informal Discovery Conference;

- 1 • Reviewing and analyzing EmployBridge, LLC's Motion to Strike Portions of
- 2 Plaintiff Elizabeth Ruiz's First Amended Complaint, drafting and filing Plaintiff
- 3 Elizabeth Ruiz's Opposition, and reviewing and analyzing Defendant's Reply;
- 4 • Reviewing and analyzing EmployBridge, LLC's Motion to Compel Arbitration,
- 5 drafting and filing a Non-Opposition in Part, and reviewing and analyzing
- 6 EmployBridge, LLC's Reply;
- 7 • Reviewing and analyzing Defendant's two Motions to Compel Arbitration,
- 8 drafting and filing Oppositions, and reviewing and analyzing Defendant's
- 9 Replies;
- 10 • Reviewing and analyzing EmployBridge, LLC's Joinder in Defendant's second
- 11 Motion to Compel Arbitration, drafting and filing an Opposition;
- 12 • Completing the prerequisites for demanding arbitration;
- 13 • Drafting and filing a California Rules of Court 3.770 compliant Request for
- 14 Dismissal Without Prejudice of Individual and Class Allegations;
- 15 • Meeting and conferring with defense counsel multiple times regarding the
- 16 prospect of mediation and resolution;
- 17 • Meeting and conferring with defense counsel regarding mediation, performance
- 18 of informal discovery beforehand, and negotiating with opposing counsel
- 19 regarding the parameters thereof;
- 20 • Communicating extensively with co-counsel about the parameters of joint
- 21 representation, and then working cooperatively with co-counsel and opposing
- 22 counsel for the receipt of a representative sampling and analyzing the same with
- 23 the aid of Plaintiffs and expert data consultants to perform analyses of liability
- 24 and exposure prior to attendance of the mediation in this matter;
- 25 • Selecting a mediator and mediation date;
- 26 • Preparation of a mediation brief and damages model for use at mediation;
- 27 • Communicating with Plaintiffs regarding updates on this matter to ensure he
- 28 remained apprised of the events and happenings;

- Negotiating, finalizing and fully executing the Settlement Agreement; and
- Preparing the instant Motion for Settlement Approval.

PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. Thus, the Court should find that PAGA Counsel's hours were necessary and reasonable to achieve an excellent result. PAGA Counsel's hourly rates are in line with, and, in fact, modest, compared with the hourly rates of other counsel in similar actions.

The over 459 hours expended by the lawyers and staff members of Bibiyan Law Group, P.C., and the over 101 hours expended by the lawyers and paralegals of Haines Law Group, APC, in connection with this Action is only a calculation of efforts made thus far; it does not include the time that will be spent preparing for and attending the approval hearing, reviewing the Settlement Administrator's final calculations, and subsequent coordination with the Settlement Administrator to ensure payments to Aggrieved Employees are timely distributed. Thus, PAGA Counsel request that the Court find that these hours are reasonable in this litigation.

The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigation of the facts and the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Further, the fee award should include fees incurred to establish and defend the attorney's fee claim. (*Serrano v. Priest* (1982) 32 Cal. 3d 621, 639.). Here, PAGA Counsel have established by declaration testimony the over 560 hours spent in this case, which suffices for evidentiary purposes.

Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. (*Serrano*, 20 Cal.3d at 48). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-

1 the-fund the attorney would have received on the fair market. (*Id.*) However, this list is not
2 exhaustive, and the Court can consider other factors it deems important in setting the multiplier.
3 (*Id.* at 40.) A limitation in setting the multiplier is that the Court cannot duplicate factors already
4 included in the lodestar. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1139.).

5 Multipliers are commonly awarded in cases accepted on a contingent basis. (*Ketchum v.*
6 *Moses* (2001) 24 Cal.4th 1122, 1133 [contingent risk multipliers applied to attract attorneys to cases
7 of significant societal importance and “to compensate them for the risk of loss generally in
8 contingency cases *as a class*.”]; *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947
9 [contingency fee factor *alone* supported a multiplier].) Indeed, it is virtually impossible to bring a
10 plaintiff’s counsel’s compensation “into line with incentives they have to undertake claims for which
11 they are paid on a fee-for-services basis” unless a premium (*i.e.*, a multiplier) is provided. (*Ketchum*,
12 24 Cal.4th at 1132.) “Multipliers can range from two to four or even higher”. (*Wershba v. Apple*
13 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in *Hernandez*
14 *Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 273-74, fn. 4.).

15 PAGA Counsel have been representing Plaintiff for more than three years, while never
16 receiving any compensation, and expending significant time and resources which could have been
17 directed towards other cases. In agreeing to litigate this case on a contingent fee basis, PAGA
18 Counsel assumed considerable risk given the uncertain outcome of PAGA actions, which was
19 amplified in light of *Wesson*.

20 In applying the multiplier, *Newberg on Class Actions* states that “[m]ultipliers ranging from
21 one to four frequently are awarded in common fund cases when the lodestar method is applied. A
22 large common fund award may warrant an even larger multiplier.” (*Id.*, Vol. 3, §14.03, pp. 14-5,
23 Dec. 1992.). Applying these factors to the instant Action demonstrates that Class Counsel should be
24 awarded attorneys’ fees based upon a *very modest* multiplier of only 1.17 (\$413,333.33 / \$352,885).

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1 a. Plaintiff Would Have Been Entitled to a Multiplier Based on a Percentage
2 of the Fund to Ensure that the Fee Awarded is Within the Range of Fees
3 Freely Negotiated in the Legal Marketplace in Comparable Litigation

4 Here, the multiplier sought is justified to compensate Class Counsel at a rate reflecting the
5 risk of nonpayment in this matter, as PAGA Counsel's representation of Plaintiffs was purely on
6 a contingent basis. The risk of nonpayment in this Action was particularly acute, too. This is
7 because litigating a wage-and-hour representative action through trial takes years and requires the
8 investment of tens (if not hundreds) of thousands of dollars and thousands of hours of time.
9 Litigation costs in the present case for Class Counsel are already over \$23,000.00. Attorneys
10 willing to undertake this risk deserve a high rate of recovery.

11 Moreover, wage-and-hour laws are still developing, and change in the law always threaten
12 to wipe out the plaintiff's attorney. In fact, numerous appellate decisions and decisions of both
13 the California and United States Supreme Courts have attacked the validity of PAGA actions
14 directly relevant to this case, including *Wesson*, which, as set forth herein, could have significantly
15 affected its value. It is this contingent nature of these cases that justify an award when and if
16 PAGA Counsel are able to obtain a settlement or verdict, because oftentimes no money is
17 recovered in a case, including plaintiff's counsel's costs, let alone their time.

18 b. The Quality of Representation, the Novelty, and Complexity of the Issues
19 and Results Obtained

20 PAGA Counsel used a high level of skill in addressing the difficult questions presented in
21 this case, which involved the contested issues regarding: the compliance of various of Defendant's
22 policies with the Labor Code, including whether all time worked was paid for; whether meal
23 and/or rest breaks were given in compliance with the Labor Code; issues regarding the timeliness
24 of pay, including whether all pay was received by termination or resignation; the sufficiency and
25 accuracy of wage statements (including whether issues therewith, if any, were intentional or
26 injurious); and various other issues. Proof of PAGA Counsel's skill in this area of law lies in the
27 size of this Settlement and the recoveries of the State and Aggrieved Employees despite
28 Defendant's contentions that Plaintiffs' unpaid wages claims are speculative; Defendant's

1 contention that its meal and rest period policies were compliant; and other hurdles encountered by
2 PAGA Counsel that were traversed in reaching this Settlement pertaining to evolving case law
3 regarding PAGA actions.

4 *c. This Litigation Precluded Other Employment by PAGA Counsel*

5 A practitioner can only properly litigate so many cases at one time. The requirements of
6 this case were significant, requiring over 560 hours to be expended to date by PAGA Counsel,
7 and another twenty-five (25) to fifty (50) hours conservatively expected to be expended in the
8 future in connection with approval, settlement administration, answering questions of Aggrieved
9 Employees, and updates to this Court regarding uncashed checks. PAGA Counsel were also most
10 definitely precluded from other employment. This factor must also be considered.

11 **4. PAGA Counsel's Hourly Rates are Reasonable**

12 PAGA Counsel's hourly rates for attorneys are: for Bibiyan Law Group, P.C., \$1,000, \$900,
13 \$725, \$600, \$500, \$475, \$425, and \$400, with paralegal and legal assistant's hourly rates are \$175
14 and \$75, respectively; and for Haines Law Group, APC, \$850, \$750, and \$400, with paralegal hourly
15 rate of \$175.

16 At this requested rate, this results in a total lodestar amount of \$352,885. A reasonable hourly
17 rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant
18 community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.) The Court may consider
19 other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the
20 nature of the work performed, the relevant area of expertise, and the attorney's customary billing
21 rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.)

22 One difficulty in determining the hourly rate of attorneys of similar skill and experience in
23 the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a
24 practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive
25 litigation, and thus retainer agreements in such cases are based on a contingency fee relationship.
26 Although there is no customary billing rate, the nature of class action work should be strongly
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1 considered by the court. Courts have upheld rates as high as \$450⁶ per hour (in 1993) in employment
2 matters. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, overruled on other
3 grounds.)

4 A survey conducted by the National Law Journal for the year 2002 provides a sample of a
5 billing rate for California Lawyers. In that survey, six California firms provided their hourly billing
6 rates. Of those six firms, five regularly charge in excess of \$500.00 per hour for their partners. In
7 fact, four of the firms charge as high as \$600.00, \$620.00, \$650.00, and up to \$850.00 per hour.
8 These firms are located in Orange County, Los Angeles County, San Francisco County and San
9 Diego County and are the types of firms that PAGA Counsel regularly oppose in these class action
10 cases. (*See* National Law Journal Survey, attached as Exhibit “4” to the Declaration of Brandon M.
11 Chang.). The only difference is that these defense attorneys are paid on a monthly basis and do not
12 have to advance any costs on a case.

13 Finally, PAGA Counsel attach the Declaration of Richard Pearl in support of the Motion for
14 Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los Angeles
15 Superior Court Case No. BC441237, dated January 4, 2011. (*See* Declaration of Richard Pearl
16 attached as Exhibit “5” to the Declaration of Brandon M. Chang.) Mr. Pearl specializes in issues
17 related to cost-award attorney’s fees, including the representation of parties in fee litigation and
18 appeals, serving as an expert witness, mediator and arbitrator in disputes concerning attorney’s fees
19 and related issues. Mr. Pearl is also the author of California Attorney’s Fee Awards (3d ed. Cal.
20 CEB 2010), as well as the author of the Second Edition, years 1994 through 2008. He has also
21 authored numerous other publications on attorney’s fees, as set forth in his Declaration.

22 Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California. He
23 confirms that courts have approved hourly rates of attorneys as follows:

- 24 ● Rates of up to \$875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior
25 Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- 26 ● Rates of up to \$750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County

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28 ⁶ Adjusted for inflation, \$450 in 1993 equals over \$860 in 2022.

1 Superior Court (before applying a 3.7 multiplier); and

2 • Rates of up to \$750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San
3 Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25 multiplier). *Id* at pages
4 4 and 5.

5 Additionally, Mr. Pearl has reviewed numerous declarations, depositions, and surveys of
6 legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to \$775.00,
7 \$795.00, \$800.00, \$855.00, \$950.00, etc. (*Id.* at pp. 6-12). These are non-contingent rates where
8 payment in full is expected promptly upon billing. (*Id.* at p. 13).

9 PAGA Counsel are experienced litigators which specialize in employment law, with a
10 substantial PAGA and wage and hour class action practice. Moreover, similar rates for the attorneys
11 and staff of PAGA Counsel have been approved by various California Superior Courts. Given the
12 skill and experience of PAGA Counsel in this case, and the excellent result achieved for the State
13 and other Aggrieved Employees, the requested rates are reasonable.

14 **5. PAGA Counsel's Litigation Expenses are Reasonable**

15 The Settlement provides for reimbursement of PAGA Counsel's reasonable litigation costs
16 in an amount up to \$40,000.00. PAGA Counsel request only \$23,723.63 in total for costs incurred.
17 Because these costs are reasonable, PAGA Counsel request that the Court approve those costs.

18 **6. The Settlement Administrator Expenses are Reasonable**

19 The Settlement Administrator's request for costs of up to \$6,550.00 is reasonable, given the
20 tasks to be performed by the Settlement Administrator, including but not limited to (a) processing
21 the data provided by Defendant to be used in calculating the Aggrieved Employees' payments; (b)
22 preparing, printing and mailing to the 1,030 Aggrieved Employees the PAGA Payment Letter, as
23 well as following up with reasonable skip tracing; (c) calculating and mailing Aggrieved
24 Employees' payments to Aggrieved Employees; (d) filing any required federal and state tax forms
25 and related agency reporting; (e) filing any required reports with the Court; (f) establishing a
26 settlement fund; (g) distributing the Gross Settlement Amount; (h) voiding uncashed or
27 undeliverable checks to issue those funds to the State Controller's Office; (i) providing necessary
28

1 reports and declaration; and (j) all other tasks described in the Settlement Agreement, as to which
2 the Parties mutually agree. The Settlement Administrator's costs should be approved.

3 **D. The Requested Service Payment is Reasonable**

4 Plaintiffs in class and representative actions are eligible for reasonable enhancement
5 payments as compensation "for the expense or risk they have incurred in conferring a benefit on
6 other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010)
7 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements
8 containing service awards for the class representatives, which are "intended to compensate class
9 representatives for work performed on behalf of the class, to make up for financial or reputational
10 risk undertaken in bringing the action, and to recognize their willingness to act as a private attorney
11 general." (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94, citations
12 omitted.)

13 The same reasoning enhancement awards are given in class actions should be applied in
14 PAGA actions to provide relief that is consistent with the underlying purpose of the statute. "Unlike
15 a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is
16 to incentivize private parties to recover civil penalties for the government that otherwise may not
17 have been assessed and collected by overburdened state enforcement agencies." (*McKenzie*, 765 F.
18 Supp. 2d at 1233.) The California legislature enacted PAGA to "augment the limited enforcement
19 capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives
20 of the Agency." (*Iskanian*, 59 Cal.4th at 383.)

21 Failing to provide an enhancement award in a representative action for civil penalties would
22 completely undermine the purpose of PAGA by eliminating any incentive to pursue such cases. As
23 an action for civil penalties, a PAGA action is not compensatory in nature, and a PAGA plaintiff
24 cannot expect to obtain restitution for the violations forming the basis for a PAGA settlement.

25 It is for this reason that courts routinely award enhancement payments in other PAGA
26 settlements. (*Blanchard v. BJ's Restaurants, Inc.*, Orange County Superior Court Case No. 30-2014-
27 00761961-CU-OE-CX (Sept. 26, 2016) [approving \$10,000 service award]; *Bui v. Vitamin Shoppe*
28 *Industries Inc.*, Los Angeles County Superior Court Case No. BC518486 (Aug. 31, 2016)

1 [approving \$10,000 service award]; *Jesus Miranda v. HomeDeliveryLink, Inc.*, San Bernardino
2 County Superior Court Case No. CIV DS1505393 (Aug. 9, 2016) [approving \$10,000 service
3 award]; *Mohamad Najjar v. Calop Business Systems, Inc. d/b/a Ca/op Aeroground Service*, Los
4 Angeles County Superior Court Case No. BC582290 (April 5, 2016) [approving \$10,000 service
5 award]; and *Sheldon v. AHMC Monterey Park Hospital LP*, Los Angeles County Superior Court
6 Case No. BC440282 (March 2, 2016) [approving \$10,000 service award].)

7 The proposed settlement would not have been made possible without Plaintiffs' effort and
8 commitment. The requested payment is intended to recognize Plaintiffs' effort in bringing the
9 Action, serving as private attorney general under PAGA, assisting PAGA Counsel with the
10 investigation, litigation, and settlement, regularly conferring with Counsel on the status of the case,
11 reviewing the Settlement Agreement, providing a declaration in support of this Motion, and
12 providing a broader release to Defendant. For these reasons, the Court should approve the requested
13 enhancement award of \$7,500.00 to Plaintiff Elizabeth Ruiz and Plaintiff Joseph W. Duran, each,
14 for a total of \$15,000.00 to Plaintiffs.

15 **V. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Court approve the PAGA
17 Settlement Agreement in its entirety.

18
19 Dated: May 24, 2024

BIBIYAN LAW GROUP, P.C.

20
21 By: 

BRANDON M. CHANG

22 Attorneys for Plaintiffs, ELIZABETH RUIZ and
23 JOSEPH W. DURAN, as aggrieved employees,
24 and on behalf of all other aggrieved employees
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 1460 Westwood Boulevard, Los Angeles, California 90024.

On March 25, 2024 I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF DAVID D. BIBIYAN, BRANDON M. CHANG, PAUL K. HAINES, ELIZABETH RUIZ, JOSEPH W. DURAN, ANTHONY ROGERS, [PROPOSED] ORDER, and [PROPOSED] JUDGMENT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

- ELKINS EMPLOYMENT LAW**
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Attorneys for Defendant, EDELBROCK FOUNDRY, LLC

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

Executed on May 24, 2024, at Los Angeles, California.

/s/ Araceli Marquez
Araceli Marquez