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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAVID NGUYEN, an aggrieved employee, CZARMAN LUCEA, an aggrieved employee, and on behalf of other aggrieved employees; Plaintiff, vs. BAXTER HEALTHCARE CORPORATION, a Delaware corporation; KELLY SERVICES GLOBAL, LLC, a Michigan limited liability company; and DOES 1 through 50, Defendants.	Case No.: 30-2023-01358073-CU-OE-CXC [Assigned for All Purposes to: Hon. Melissa R. McCormick, Dept. CX105] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; SERVICE AWARDS; AND ATTORNEY'S FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed Concurrently with Supporting Declarations and [Proposed] Judgment and Order) DATE: August 20, 2026 TIME: 2:00 p.m. DEPT: CX105 RESERVATION ID: 74850803 Action Filed: October 30, 2023 Trial Date: Not Set

TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 20, 2026, at 2:00 p.m. in Department CX105 of the Superior Court of the State of California for the County of Orange at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiffs David Nguyen and Czarman Lucea ("Plaintiffs") will move the Court, pursuant to California Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, *et seq.,* for an Order:

1. Approving the settlement of this PAGA representative action in the form agreed to by Plaintiffs, and Defendants Baxter Healthcare Corporation ("Baxter") and Kelly Global Services, LLC ("Kelly"; collectively, "Defendants") in the PAGA Settlement Agreement (the "Settlement" or "Agreement");

2. Appointing Plaintiffs' counsel as PAGA counsel, for settlement purposes only, and approving an award to Plaintiffs' counsel for reasonable attorney's fees in the amount of $140,000.00, broken down as $70,000.00 to Justice for Workers, P.C. and $70,000.00 to Otkupman Law Firm; and reasonable costs in the amount of $22,415.50, broken down as $11,467.35 to Justice for Workers, P.C. and $10,948.15 to Otkupman Law Firm;

3. Appointing CPT Group as the Administrator, and approving payment of Administrator's costs in the amount of $8,500.00;

4. Approving service awards for Plaintiffs in the amount of $5,000.00 each, totaling $10,000.00;

5. Approving the release of PAGA claims by Plaintiffs on behalf of Aggrieved Employees and the LWDA;

6. Directing consummation of the Settlement pursuant to its terms and provisions;

7. Entering final Judgment;

8. Setting a Non-Appearance Case Review Hearing Regarding Distribution; and

9. Without affecting the finality of the Judgment and Order, reserving exclusive and continuing jurisdiction over the Actions, the Parties, and the Aggrieved Employees for purposes of interpreting and enforcing the terms, conditions, and obligations of the Settlement pursuant to California Code of Civil Procedure section 664.6.

This Motion will be based upon this notice, the attached Memorandum of Points and Authorities, Declarations of William C. Sung, Roman Otkupman, Nidah Farishta, David Nguyen, Czarman Lucea, Julie Green of CPT Group, Yesenia Gallegos of McDermott Will & Schulte LLP on behalf of Baxter, Jennifer A. Riley of Duane Morris, LLP on behalf of Kelly, and exhibits thereto that were filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: May 13, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff DAVID NGUYEN

DATED: May 13, 2026

Respectfully submitted,

OTKUPMAN LAW FIRM

By: ______________________

Roman Otkupman
Nidah Farishta
Attorneys for Plaintiff CZARMAN LUCEA

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I. INTRODUCTION

This Motion seeks Court approval of the settlement of this California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA") representative action brought by David Nguyen and Czarman Lucea ("Plaintiffs") against Defendants Baxter Healthcare Corporation ("Baxter") and Kelly Services Global, LLC ("Kelly"; collectively, "Defendants"). After a full day of global mediation with experienced neutral mediator Steven Pearl, Esq. and months-long, post-mediation negotiations, the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement (the "Settlement" or "Agreement")[1].

The Settlement calls for a Gross Settlement Amount of $420,000.00. After deducting Plaintiffs' counsel's reasonable attorney's fees and costs awards, service awards for Plaintiffs, and payment for the Administrator's cost, approximately $179,313.38 in civil penalties will be paid to the California Labor and Workforce Development Agency (the "LWDA") and $59,771.13 in civil penalties will be paid to approximately 536 Aggrieved Employees. The average approximate share of the settlement paid to Aggrieved Employees is $111.51. Pursuant to Labor Code section 2699(s)(2), Plaintiff Nguyen now files this unopposed motion, seeking an order approving the proposed Settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." Lab. Code § 2699(s)(2). In deciding whether to grant approval of a proposed settlement, the primary issues to be decided is whether the settlement is fair, adequate, and reasonable. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.

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[1] A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung in Support of Motion for Approval of PAGA Settlement ("Sung Decl."). All defined terms in this Motion have the same definition as that in the Agreement. The Explanatory Letter is attached as **Exhibit A** to the Agreement.

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. PLAINTIFFS' CLAIMS AND PROCEDURAL BACKGROUND

Defendant Baxter operates medical device manufacturing facilities in California and Defendant Kelly is a staffing agency. Sung Decl., ¶ 8. Defendant Kelly placed Plaintiff Nguyen to work for Defendant Baxter as an hourly paid, non-exempt employee from approximately February 2023 to August 2023 as an assembler at its Irvine facility. Declaration of David Nguyen ("Nguyen Decl."), ¶ 2. Defendant Baxter directly employed Plaintiff Lucea from approximately November 2020 to January 2024 as a delivery driver at its Dixon facility. Declaration of Czarman Lucea ("Lucea Decl."), ¶ 2. Plaintiffs contend they and their coworkers were subjected to the same alleged unlawful labor practices during their employment. Nguyen Decl., ¶ 2; Lucea Decl., ¶¶ 3-8.

On August 25, 2023 and October 3, 2023, Plaintiff Nguyen submitted the LWDA Letter and Amended LWDA Letter of alleged Labor Code violations to Defendants and the LWDA. Sung Decl., ¶ 9, **Exh. 2** – LWDA Letter, **Exh. 3 –** Amended LWDA Letter. Plaintiff Nguyen's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. *Ibid.* On October 30, 2023, Plaintiff Nguyen filed the Representative Action Complaint alleging a single cause of action for Violation of the California Private Attorneys General Act. *Ibid*.

On May 31, 2024, the Court granted Defendants' Motion to Compel Arbitration and ordered Plaintiff Nguyen to arbitrate his individual claims, dismiss class claims, and stay PAGA claim pending individual arbitration. Sung Decl., ¶ 10. Thereafter, Plaintiff Nguyen filed a Demand for Arbitration against Defendants with AAA, Case No. 01-24-0008-1468-2-RJ. Sung Decl., ¶ 11.

On March 22, 2024, Plaintiff Lucea submitted a letter of alleged Labor Code violations to Defendants and the LWDA. Declaration of Roman Otkupman ("Otkupman Decl."), ¶ 12, **Exh. 1** –

Lucea PAGA Letter. Plaintiff Lucea's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. *Ibid.*

On May 30, 2024, Plaintiff Lucea filed a class and PAGA complaint in Solano County Superior Court, Case No. CU24-04170 (the "*Lucea* Action"; collectively, with this Action, the "Actions"), against Defendant Baxter alleging the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay all wages; (4) knowing and intentional failure to comply with itemized employee wage statement provisions; (5) failure to timely pay wages due at termination; (6) failure to timely pay employees; (7) failure to reimburse for business expenses; (8) failure to pay for all hours worked, including overtime hours worked; (9) violation of Business and Professions Code section 17200; and (10) civil penalties pursuant to PAGA. Otkupman Decl., ¶ 13.

After the Parties agreed to a global settlement and executed the Agreement, the Parties stipulated to, and the Court granted on March 18, 2026, consolidation of the Actions. Sung Decl., ¶ 12. On Mach 19, 2026, Plaintiffs filed the operative First Amended Complaint which consolidated the Action ("Complaint). *Id.*, **Exh. 4** – Complaint.

B. DISCOVERY, INVESTIGATION, AND MEDIATION

Prior to mediation, the Parties engaged in informal discovery, which allowed the Parties to meaningfully mediate this matter. Sung Decl., ¶ 13; Otkupman Decl., ¶ 14. Specifically, Defendants produced: (1) PAGA demographics including the number of direct-hire and staffing agency Aggrieved Employees and breakdown of PAGA Pay Periods; (2) time and payroll records for a 20% random sampling of Aggrieved Employees during the PAGA Period; (3) Defendants' employee handbooks and standalone policies and procedures; and (4) Plaintiffs' personnel records and wage statements. *Ibid*.

Plaintiffs' counsel retained and worked with an expert data scientist with prior class action litigation experience, AttorneyTalk, to analyze and review the documents regarding Defendants' wage and hour policies and practices, Aggrieved Employees' time and pay records, and other information provided by Defendants and Plaintiffs. Sung Decl., ¶ 14. Plaintiffs' counsel were able to evaluate the probability of success on the merits and Defendants' maximum and risk-adjusted monetary exposure and prepare a damage analysis prior to mediation. *Ibid*. The time and pay records of a sampling of Aggrieved Employees allowed Plaintiffs' counsel and their expert to prepare an analysis with a high degree of certainty. *Ibid*. In conjunction with their extensive factual investigation, Plaintiffs' counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. *Ibid*. Thus, Plaintiffs and Plaintiffs' counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. *Ibid*.

On May 1, 2025, the Parties participated in private mediation before Steven Pearl, Esq., an experienced, neutral, class action and PAGA mediator. Sung Decl., ¶ 15; Otkupman Decl., ¶ 15. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. *Ibid*. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. *Ibid*.

The Parties did not reach a settlement at mediation on May 1, 2025. Sung Decl., ¶ 16; Otkupman Decl., ¶ 15. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, the Parties eventually reached a settlement of the Actions on June 26, 2025, the material terms of which are encompassed within the Settlement. *Ibid.*

C. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT

The Settlement covers all current and former California hourly or non-exempt direct-hire employees employed by Baxter, or staffing employees employed by Defendant Kelly and staffed at Defendant Baxter during the PAGA Period. Agreement, § I.2. The PAGA Period is August 25, 2022, through the approval of the Settlement or August 26, 2026, whichever date is earlier. Agreement, § I.11. The Agreement provides an Escalator Clause up to 32,241 Pay Periods and, if the number of Pay Periods exceeds 32,241 by more than 11% (i.e., more than 35,788 Pay Periods), Defendants may elect to proportionally increase the Gross Settlement Amount or adjust the PAGA Period end date so the number of Pay Periods stay within 35,788 Pay Periods. Agreement, § III.3. Defendants shall verify the number of Pay Periods and make its election, if applicable, no later than

30 days prior to the hearing on this Motion. *Ibid.*

The Gross Settlement Amount of the Settlement is $420,000.00. Agreement, § I.8. Plaintiffs seek attorney's fees of $140,00.00 (33 1/3% of the Gross Settlement Amount). Agreement, § III.4.a. Plaintiffs' litigation costs are approximately $22,415.50, including estimated future costs in filing this Motion and supporting papers ($77.97), supplemental filings for this Motion ($77.97), and filing of the Administrator's declaration of compliance ($13.66). Sung Decl., ¶ 17; **Exh. 5** – *Nguyen* Itemized Costs; Otkupman Decl., ¶ 25, **Exh. 3** – *Lucea* Itemized Costs.

The Administrator will be paid administration costs not to exceed $8,500.00. Agreement, § III.4.b. The Parties jointly selected CPT Group as the neutral entity to administer this Settlement based on its bid of $8,500.00. Sung Decl., ¶ 18; *see also* Declaration of Julie Green of CPT Group ("Admin. Decl."), ¶ 8, **Exh. B** – Administrator Bid.

The Settlement provides for service awards for Plaintiffs in the amount of $5,000.00 each, totaling $10,000.00, for their service to the LWDA and the Aggrieved Employees and the risk they undertook by attaching their names to this Action, plus Individual PAGA Payments that Plaintiffs are entitled to receive as Aggrieved Employees. Agreement, § III.4.c. Based on the number of Pay Periods worked during the PAGA Period, Plaintiff Nguyen is estimated to receive approximately $51.91 in Individual PAGA Payment and Plaintiff Lucea is estimated to receive $66.74 in Individual PAGA Payment. Sung Decl., ¶ 19. Via separate settlement agreements, the Parties have settled each Plaintiff's individual, non-PAGA wage and hour claims, along with a general release of all claims and waiver of Code of Civil Procedure § 1152, for $15,000.00 each. *Ibid*.

After deducting Plaintiffs' counsel's attorney's fee and cost awards, service awards for Plaintiffs, and payment to the Administrator, in the amounts approved by the Court, the remainder, called the Net Settlement Amount, will be distributed as 75% to the LWDA and 25% to Aggrieved Employees. Agreement, §§ I.9.; III.5. The amount estimated in the Net Settlement Amount for the LWDA payment and the Aggrieved Employee payment is **$239,084.50**. Sung Decl., ¶ 20 Accordingly, approximately **$59,771.13** (25% of the Net Settlement Amount) will be paid to the estimated 536 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved Employee worked during the PAGA Period, and the raw average payment to Aggrieved

Employees is estimated at **$111.51**. *Ibid*. All Individual PAGA Payments will be classified as 1099 payments. Agreement, § IV.3.

Defendants will fund the Gross Settlement Amount within 15 business days of the Effective Date, which is the date that the Court enters a final order and judgment approving the Settlement. Agreement, §§ I.5; III.2. Within 15 calendar days of the Effective Date, Defendants will provide the Administrator with a PAGA list of all Aggrieved Employees, including their full name, last known mailing address, social security number, and number of Pay Periods worked during the PAGA Period or dates of employment. Agreement, § IV.2. Upon receipt of the PAGA list, the Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Agreement, § IV.3. Within 15 calendar days of the Settlement being fully funded, the Administrator will mail copies of the Explanatory Letter, attached as **Exhibit A** to the Agreement, and translated into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiffs' counsel, court-approved service awards to Plaintiff, and court-approval administration costs to itself. Agreement, §§ IV.3., IV.5.

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to the forwarding address affixed thereto or address obtained through skip-tracing. Agreement, § IV.4. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. *Ibid*.

Upon entry of an Order approving the Settlement and full payment by Defendants of the Gross Settlement Amount, all Aggrieved Employees, including Plaintiffs, on behalf of themselves and their respective former and current representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California, will release any and all PAGA Released Claims (defined as "all claims for PAGA civil penalties that were alleged, or reasonably could have been alleged based on any of the facts stated in the Complaint or any of the LWDA Letters") against the Released Parties (defined as "Defendants Baxter Healthcare Corporation and Kelly Services Global, LLC, and Kelly Services, Inc. and any of their parents, subsidiaries, affiliates, predecessors or successors, and any and all of their agents, employees, officers, directors, and attorneys") that relate to or arose during the PAGA Period. Agreement, §§ I.12; I.17; III.6.

III. <u>DISCUSSION</u>

A. AVAILABILITY OF CIVIL PENALTIES

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted PAGA, permitting, as an alternative, an aggrieved employee to initiate a private civil action "on behalf of himself or herself and other current or former employees . . ." Lab. Code § 2699(a). The penalties collected in these private civil actions are to be distributed 75 percent to the LWDA and 25 percent to the aggrieved employees. Lab. Code, § 2699(m). However, before an employee may file an action seeking to recover civil penalties, he or she must comply with the Act's administrative procedures as set forth in Labor Code § 2699.3(a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time. *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.

Here, in compliance with Labor Code section 2699.3, Plaintiffs provided notice to the LWDA and Defendants on August 25, 2023, October 3, 2023, and March 22, 2024. Sung Decl., ¶ 9; Otkupman Decl., ¶ 12. Plaintiffs' administrative exhaustion periods expired without the LWDA indicating its intent to investigate the allegations. *Ibid*.

B. THE SETTLEMENT WARRANTS APPROVAL

Settlement of PAGA claims must be approved by a Court. Lab. Code § 2699(s)(2). Here, the circumstances weigh heavily in favor of approval, as explained below.

1. <u>The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public</u>

Plaintiffs' counsel have conducted a thorough investigation into the facts of this case. Sung Decl., ¶ 21; Otkupman Decl., ¶¶ 10-11, 14, 16-18. Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiffs' counsel is of the opinion that the Settlement is fair, reasonable, and adequate. *Ibid*. Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendants on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State. *Ibid*. The Settlement avoids the risks, burdens, and the accompanying expense of further litigation. *Ibid*.

Based on Plaintiffs' counsel's analysis of the time and payroll records provided by Defendants and on information from Plaintiffs, Plaintiffs' counsel evaluated Defendants' maximum and risk-adjusted potential exposure. Sung Decl., ¶ 22. Based on Defendants' disclosures, there were approximately 536 Aggrieved Employees who collectively worked approximately 32,241 pay periods. *Ibid*.

Plaintiffs' assessment of potential recovery of PAGA penalties in this Motion is limited to $100 initial penalties because, to Plaintiffs' knowledge, Defendants have not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiffs asserted and the heightened subsequent violation penalty should not apply. Sung Decl., ¶ 23; *see* Lab. Code § 2699(f)(2)(B). Plaintiffs' counsel's valuation of each theory of liability is set forth below.

As to all claims, Defendants argue the Court will exercise its discretion to reduce PAGA penalties. Sung Decl., ¶ 24; Otkupman Decl., ¶ 17. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award the full amount of PAGA penalties where ". . . 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." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. *See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations). Here, Defendants argue that based on their compliant policies and practices, their defenses on Plaintiffs' theories of liability on the merits, and the hyper technical nature of the regular rate and rounding claims, the Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code. Sung Decl., ¶ 24.

<u>Unpaid Wages Due to Rounding and Regular Rate Violations</u>. Plaintiffs alleged Defendants failed to pay all minimum and overtime wages due to unlawful rounding of employee time punches. Sung Decl., ¶ 25. Plaintiffs' expert found minimum wage violations in 9.79% of pay periods due to Defendants' rounding practice. *Ibid.* Plaintiffs also alleged that Defendants failed to factor in all non-discretionary renumeration into the regular rate of pay. *Ibid.* Plaintiffs' expert found overtime violations in 12.05% of pay periods due to Defendants' rounding and regular rate practices and 8.25% of pay periods had a paid sick leave violation arising from regular rate issues. *Ibid.* Based on the expert's analysis and extrapolating the violation rates, Plaintiffs estimated Defendants' maximum liability for civil penalties are $315,540.77 for minimum wage violations, $194,291.37 for overtime violations, and $266,124.35 for paid sick leave violations. *Ibid.*

In response, Defendants argued their rounding policies/practices were lawful, since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. Sung Decl., ¶ 26. Defendants also contended that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. *Ibid; see, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028. As to the regular rate theory, Defendants argued it properly factored most incentives into the regular rate and vigorously opposed any regular rate lability. Sung Decl., ¶ 26. Defendants further argued that, even if there were underpayment of wages as a result of their rounding and regular rate practices, any underpayment were "dollars and cents," significantly disproportionate to their penalty exposure, and the Court will dramatically reduce penalties as a result. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 50% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$157,770.38** for minimum wage violations, **$97,109.69** for overtime violations, and **$133,062.17** for paid sick leave violations. *Ibid.*

Meal Period Violations. Plaintiffs alleges that they and other employees sometimes did not receive compliant meal breaks. Sung Decl., ¶ 27. Plaintiffs' expert analyzed the records and found a net 24.42% violation rate by pay periods after applying meal period premiums (i.e., 24.42% of pay periods had one or more shifts without compliant meal period punches). *Ibid.* Plaintiffs' expert estimated Defendants' maximum exposure for regular violations to be approximately $787,391.62. *Ibid.* In response and in addition to the penalty reduction defense, Defendants countered that they have maintained compliant meal period policies and practices throughout the PAGA Period and always provided compliant meal periods in line with those policies. *Ibid; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 (holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods). Defendants point to the fact that the sampling time records showed superior meal period compliance rate (Plaintiffs' expert found only 17% of shifts had a facial meal period violations) and that it paid approximately over 4,300 meal period premiums as evidence of its superior meal period compliance practices. *Ibid.* As such, Defendants maintained Plaintiffs' meal period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 80% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$157,478.32**. *Ibid.*

Rest Period Violations. Plaintiffs allege that they and other employees sometimes were unable to take their rest breaks. Sung Decl., ¶ 28. Any rest period violations would not be reflected in the time or payroll records. *Ibid*. Estimating that Aggrieved Employees did not receive compliant rest breaks in approximately 20% of pay periods, Plaintiffs' expert estimates Defendants' maximum penalty exposure for rest period violations to be approximately $644,820.00. *Ibid.* In response, Defendants counter that they have maintained compliant rest period policies and practices throughout the PAGA Period and always provided compliant rest periods in line with those policies. *Ibid*. As such, Defendants maintain Plaintiffs' rest period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant rest periods, how many rest periods were non-compliant, and the reasons why a particular employee did not take a rest period on a particular shift. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 80% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$128,964.00**. *Ibid.*

Wage Statement Penalties. Plaintiffs allege that Defendant failed to issue accurate itemized wage statements to Aggrieved Employees in violation of Labor Code § 226(a) because its wage statements stated the incorrect double time rate. Sung Decl., ¶ 29. Plaintiffs' expert found Defendants' maximum exposure for inaccurate wage statements to be $1,041,599.96. *Ibid.* In response, Defendants argued that, even if the double time rates were incorrect, the amount of double time premiums paid were correct and Aggrieved Employees suffered no actual damages. *Ibid.* Therefore, Defendants contended that the Court will significantly reduce civil penalties. *Ibid*. Thus, Plaintiffs discounted Defendants' maximum exposure by 80% to account for the risk of the Court reducing penalties or failure to recover the full amount sought, to arrive at a realistic exposure of **$208,319.99**. *Ibid.*

Waiting Time Penalties. As a result of the unpaid wages and meal and rest period premiums described above, Plaintiffs contend that Defendants failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 202 to former employees. Sung Decl., ¶ 30. Thus, the claims for waiting time penalties are derivative of the underlying claims. *Ibid.* There were 162 former employees, and at $100 per former employee, Defendants realistic exposure is **$16,200.00**. *Ibid.*

Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiffs' counsel believes Defendants' maximum exposure for PAGA penalties is $3,263,196.07 and their realistic recovery at trial on these claims to be **$898,904.56**. Sung Decl., ¶ 31. The $420,000.00 settlement is a fair result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **46.72%** of Plaintiffs' realistic recovery. *Ibid.*; *see Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber*

Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135. This is a fair and equitable result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. Sung Decl., ¶ 31; Otkupman Decl., ¶ 18.

C. THE REQUESTED ATTORNEYS' FEES AND COST AWARD SHOULD BE APPROVED

For the reasons set forth below, Plaintiffs request that the Court approve an attorney's fee award of $140,000.00 and cost award of $22,415.50 to Plaintiffs' counsel.

1. <u>Plaintiffs' Counsel Request an Award of Fees Based on the Common Fund Method</u>

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. *See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25. The Supreme Court has held, "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." *Id.* at 34.

Plaintiffs' counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, 167 the Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share."

The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. *Id.* at 1378-1379. California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. *See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-379 (approving attorneys' fee award of 33%).

2. The Requested Fee is in Line with Typical Cases

"No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." Newberg on Class Actions (3rd ed. 1992) § 14.03. Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively small. *Ibid*.; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 (stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million).

Here, Plaintiffs request attorneys' fees equal to 33 1/3% of the Gross Settlement Amount, which is in line with the prevailing guidelines established under California case law and in academic literature and is consistent with awards in California. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

3. The Matter Involves a Fee and Cost Shifting Provision under PAGA

Labor Code section 2699 provides for the recovery of reasonable attorney's fees as well as costs of suit. Lab. Code § 2699(k)(1). Specifically, it states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs . . ." *Ibid*. This fee/cost-shifting provision reflects the understanding that PAGA Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that PAGA Counsel is not only permitted, but entitled, to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendants while at the same time rewarding Plaintiffs' counsel for their decision to assume risk by taking on this matter. Sung Decl., ¶ 32. In fact, prosecution of this action involved significant financial risk for Plaintiffs' counsel. *Ibid*. Plaintiffs' counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. *Ibid*. Once Plaintiffs' counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. *Ibid*.

4. <u>The Experience, Reputation, and Ability of Plaintiffs' counsel Support the Requested Fee Award</u>

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiffs' counsel possess considerable expertise in litigating class action and representative matters. Sung Decl., ¶¶ 2-6; Otkupman Decl., ¶¶ 6-7, 24; Farishta Decl., ¶¶ 6-9. Plaintiffs' counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. Sung Decl., ¶ 4; Otkupman Decl., ¶¶ 6-7, 24; Farishta Decl., ¶¶ 6-9. Because it is reasonable to compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, Plaintiffs' counsel's requested fee award is supported here.

Plaintiffs' counsels' experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of this Settlement. Sung Decl., ¶ 33. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. *Ibid.* Based on these and other factors, Plaintiffs' counsel have recently received fee awards based on a percentage of the gross recovery. *Ibid*. Therefore, the requested fee award is reasonable and fair.

5. <u>While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees</u>

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27. Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. Ibid. at p. 29. Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Plaintiff or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" *Ibid*. (quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246-249).

Although California courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. *Id.* at 556. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." *Ibid*. "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." *Id.* at 556-557.

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (approving multiplier of about 12.8). In representative actions such as this one, where the value of the benefit conferred to the representative group "can be monetized with a reasonable degree of certainty," the court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Lab. Code § 2699(k)(1). Although PAGA does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to "cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys' fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method." *Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 (quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944-945). The court in *Hermosillo* granted, in part, a plaintiff's counsel's unopposed motion for attorney's fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement fund was requested for fees. *Id.* at *1–3.

Here, Plaintiffs' counsel's current lodestar is **$161,120.00**, broken down as:

Name	**Actual Billing Rate**	**Hours Billed**	**Lodestar**
Justice for Workers, P.C. William C. Sung (14th Year Attorney)	$850	79.40	$67,490.00
Justice for Workers, P.C. Tiffany L. Luu (5th Year Attorney)	$500	48.90	$24,450.00
Otkupman Law Firm Roman Otkupman (18th Year Attorney)	$950	56.40	$53,580.00
Otkupman Law Firm Nidah Farishta (9th Year Attorney)	$600	26.00	$15,600.00
	Total:	**210.70**	**$161,120.00**

Sung Decl., ¶¶ 34-38, **Exh. 6** – William Sung Timesheet, **Exh. 7** – Tiffany Luu Timesheet; Otkupman Decl., ¶ 21, **Exh. 2**. Plaintiffs' counsel's requested fee award of $140,000.00 represents a **negative 0.87** lodestar multiplier. Sung Decl., ¶ 34. Additionally, Plaintiffs' counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. Sung Decl., ¶ 39. These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiffs regarding the case. *Ibid*.

Plaintiffs' counsel also bear the risk of taking whatever actions are necessary if Defendants fail to pay. The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiffs' counsel. Thus, the request for attorneys' fees satisfies a lodestar check. Accordingly, the Court should find that the circumstances of the present case justify an award of 33 1/3% of the Gross Settlement Amount for attorney's fees.

6. <u>Plaintiffs' Counsels' Costs Are Reasonable and Actually Incurred</u>

Plaintiffs' counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1). Under the proposed Settlement, Plaintiffs' counsel may request reimbursement of costs up to $40,000.00. Agreement, § III.4.a. Plaintiffs' litigation costs are approximately $22,415.50 ($11,467.35 incurred by Plaintiff Nguyen's counsel and $10,948.15 incurred by Plaintiff Lucea's counsel). Sung Decl., ¶ 17; Exh. 5; Otkupman Decl., ¶ 25, Exh. 3. These expenses were reasonably necessary to the litigation and were actually incurred. Moreover, these expenses are below the maximum amount ($40,000.00) allowed in the Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs should be reimbursed in full, up to the maximum amount allowed in the Settlement.

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D. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES

Pursuant to the terms of the Settlement, the fees and costs of the Administrator, are to be paid out of the common fund. Agreement, § III.4.b. The settlement administration fees are based on a flat-sum amount of $8,500.00. *Ibid*.; Admin. Decl., ¶ 8, Exh. B. The Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing Aggrieved Employees' names and addresses against the NCOA prior to mailing, setting up and managing a QSF Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiffs' counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the Aggrieved Employee, and submitting final accounting to the Court. Admin Decl., ¶¶ 7-8, Exh. B; Agreement, §§ IV.1-IV.7. All of these duties are included in the agreed-upon flat fee of $8,500.00. Thus, the Administrator's fees should be approved.

E. THE COURT SHOULD APPROVE THE REQUESTED PLAINTIFFS' SERVICE AWARDS

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving $50,000 service payment). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. The Court may award incentive payments "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id*. at 958-59.

Here, Plaintiffs seek a service award of $5,000.00 each and Plaintiffs and their counsel submit that this request is reasonable given their efforts in this case and the risks they undertook on behalf of the State and Aggrieved Employees. Nguyen Decl., ¶¶ 2-6; Lucea Decl., ¶¶ 9-13. Plaintiffs expended substantial time and effort on behalf of the State and Aggrieved Employees, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of his claims. Nguyen Decl., ¶¶ 2-6; Lucea Decl., ¶¶ 9-13. As a result of Plaintiffs' efforts, they have helped the State recover over $179,313.38in civil penalties and 536 Aggrieved Employees recover on average $111.51in civil penalties per person. Sung Decl., ¶ 20.

F. PROOF OF SERVICE ON THE LWDA AND OTHER PENDING MATTERS

The Parties are not aware of any other cases that may be impacted by the Settlement. Sung Decl., ¶ 40; Otkupman Decl., ¶ 27; Farishta Decl., ¶ 11; the Declaration of Yesenia M. Gallegos in Support of Motion for Approval of PAGA Settlement ("Gallegos Decl."), ¶¶ 2-4; the Declaration of Jennifer A. Riley in Support of Motion for Approval of PAGA Settlement ("Riley Decl.").

On May 13, 2026, Plaintiffs' counsel gave notice of this Settlement to the LWDA by filing a copy of the fully executed Agreement, Motion for Approval of PAGA Settlement, supporting declarations, and Proposed Judgment and Order with the LWDA via uploading through its website. Sung Decl., ¶ 41, **Exh. 8 -** LWDA Filing Confirmation.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the proposed Settlement, sign and enter the Proposed Judgment and Order submitted herewith, and set a Compliance Hearing Re: Status of Distribution.

Respectfully submitted,

DATED: May 13, 2026

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff
DAVID NGUYEN

DATED: May 13, 2026

Respectfully submitted,

OTKUPMAN LAW FIRM

By: ______________________________

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