

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Sandy Pham (SBN 352753)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: hsleviant@moonlawgroup.com
E-mail: spham@moonlawgroup.com

Attorneys for Plaintiff, MONA SANDERS
(erroneously listed as "MONDA SANDERS")

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MONA SANDERS, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

ESL POWER SYSTEMS, INC.; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CVRI2304316

*[Assigned for All Purposes to the Honorable
Harold W. Hopp in Department 1]*

REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 27, 2025
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Reservation ID: **091000557632**

Action Filed: August 9, 2023
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on May 27, 2025, at 8:30 a.m., in Department 1 of the above-
3 captioned Court, located at 4050 Main Street, Riverside, CA 92501, plaintiff MONA SANDERS
4 (“Plaintiff”) will and hereby does move this Court for an order approving the PAGA SETTLEMENT
5 AGREEMENT (“Agreement” or “Settlement”) reached with defendant ESL POWER SYSTEMS, INC.,
6 a true and correct copy of which is attached as **Exhibit 1** to the Declaration of H. Scott Leviant submitted
7 herewith.

8 Specifically, Plaintiff moves for an order to:

- 9 1. Grant approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorney Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
12 allocated to attorney’s fees and costs; and, the amount allocated to the settlement administrator;
13 and,
- 14 2. Direct disbursement of the Settlement Amount pursuant to the terms of the Agreement.

15 **TENTATIVE RULINGS:** This court follows California Rules of Court, Rule 3.1308 (a) (1) for
16 tentative rulings. (See Riverside Superior Court Local Rule 3316.) Tentative Rulings for each law &
17 motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at
18 <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not
19 have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

20 To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must
21 (1) notify the judicial secretary for Department 1 at (760) 904-5722 and (2) inform all other parties of the
22 request and of their need to appear telephonically.

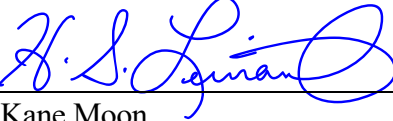
23 If no request for oral argument is made by 4:30 p.m., the tentative ruling will become the final
24 ruling on the matter effective the date of the hearing.

25 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
26 Declarations of H. Scott Leviant and Phoenix Settlement Administrators, submitted herewith, all other
27 pleadings and papers on file in this action, and any oral argument or other matter that may be
28 considered by the Court.

Respectfully submitted,

Dated: April 3, 2025

MOON LAW GROUP, PC

By: 

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff MONA SANDERS (“Plaintiff”) moves the Court for approval of the PAGA
3 SETTLEMENT AGREEMENT (“Agreement” or “Settlement”) between Plaintiff and defendant ESL
4 POWER SYSTEMS, INC. (“Defendant”) (together with Plaintiff, the “Parties”). The Agreement
5 resolves the Private Attorneys General Act (“PAGA”) claims alleged in this Action by Plaintiff, on
6 behalf of the State of California.

7 The PAGA claims are alleged pursuant to PAGA, which states: “[T]he...court shall review and
8 approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The
9 California Supreme Court has interpreted this provision to ensure “any negotiated resolution [of a PAGA
10 claim] is fair to those affected.” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The California
11 Supreme Court has not defined a standard by which trial courts are to review and approve proposed
12 PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA
13 settlement provides “genuine and meaningful [relief] consistent with the underlying purpose of the
14 statute” and is reasonable in light of the potential verdict value of all claims released. *See O’Connor v.*
15 *Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(l)(2).

16 After exchanging documents and data prior to mediation, Plaintiff and Defendant reached a
17 proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”) for
18 approximately 162 aggrieved employees (“Aggrieved Employees”). Under the Agreement, Defendant
19 shall pay a maximum sum of **\$136,000.00**, referred to as the “Gross Settlement Amount,” for Aggrieved
20 Employees employed in California during the designated PAGA period.

21 This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement
22 were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

23 For the reasons below, Plaintiff requests that the Court enter an order approving the terms of
24 settlement.

25
26 **II. SUMMARY OF THE TERMS OF SETTLEMENT**

27 The full terms of the settlement are in the Agreement. A summary of the terms of the Agreement
28 is as follows:

- (a) Aggrieved Employees: all persons employed by Defendant as hourly-paid or nonexempt employees in the State of California during the PAGA Period (August 8, 2022 to the date of the approval of the settlement in the Action). (Agreement, ¶¶ 1.4, 1.20).
- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$136,000.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs, and the settlement administrator’s fees and costs, and subject to the escalator clause. (Agreement, ¶¶ 3.1, 3.2, 8)
- (d) Net Settlement Amount: At least **\$62,521.10** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$46,890.82** under the Agreement, and Aggrieved Employees will receive at least **\$15,630.27**. (Agreement, ¶¶ 1.16.)
- (e) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees in the amount of **\$45,333.33**, subject to the escalator clause, which is one-third of the GSA. (Agreement, ¶¶ 3.2.1, 8.1; Leviant Decl., ¶ 39.)
- (f) Litigation Costs: Plaintiff’s Counsel seeks reimbursement of actual litigation costs, to a maximum amount of \$15,000.00. Those actual costs are expected to be \$18,829.93. Therefore, **\$15,000.00** is requested. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 40, and Exh. 2.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, Phoenix Settlement Administrators, which has agreed to perform Administrator duties for a flat fee not to exceed **\$4,000.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 41; Declaration of Jodey Lawrence [Decl. of Lawrence], ¶ 16.)
- (h) Uncashed Checks: Uncashed checks will be cancelled, and the funds will,

pursuant to Unclaimed Property laws, be directed to the California State Controller's Office in the name of the Aggrieved Employee who did not cash the check. (Agreement, ¶ 4.4.3.)

(i) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and Plaintiff.¹ (Agreement, ¶ 5; Leviant Decl. ¶ 24, Exh. 1.)

(j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45, Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff, a former employee of Defendant, commenced this Lawsuit against Defendant in the Superior Court of California for the County of Riverside, asserting violations of various provision of the Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations subject Defendant to potential liability under California's Labor Code Private Attorneys' General Act ("PAGA") for penalties pursuant to Labor Code § 2698, *et seq.* (*Id.*) Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (*Id.*)

Defendant manufactures specialized electrical systems for a variety of commercial applications, including warehouse equipment, mobile power systems for train yards, ship to shore and shipyard power systems, and emergency power generation systems. (Leviant Decl., at ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (*Id.* at ¶ 6.) Defendant contends it had lawful policies, including break and pay policies, in effect throughout the statutory period, and viable defenses to a substantial portion of the alleged penalty claims. (*Id.* at ¶ 7.)

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 **IV. PROCEDURAL HISTORY**

2 Plaintiff’s Counsel sent a letter to the California Labor and Workforce Development Agency
3 (“LWDA”) on behalf of Plaintiff in compliance with Labor Code § 2699.3. (Leviant Decl., ¶ 8.) More
4 than 65 days passed after each letter was sent to the LWDA, and the LWDA did not indicate that it
5 intended to investigate the alleged violations referenced in either letter. (*Id.* at ¶ 9.) On August 9, 2023,
6 Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for
7 failure to pay minimum and straight time wages; failure to pay overtime wages; failure to provide meal
8 periods, failure to authorize and permit rest periods, failure to indemnify necessary business expenses;
9 failure to timely pay final wages at termination, failure to provide accurate itemized wage statements;
10 and unfair business practices. (*Id.*, at ¶ 10.) On October 13, 2023, Plaintiff filed a First Amended
11 Complaint alleging a cause of action against Defendant for civil penalties under the Private Attorneys
12 General Act of 2004 (“PAGA”). (*Id.*) The First Amended Complaint is the operative complaint in the
13 Action (the “Operative Complaint.”). (*Id.*) Class claims were dismissed without prejudice, based on the
14 terms of an arbitration agreement. (*Id.*) The Parties agreed to settle the matter as a PAGA action. (*Id.*)
15 Defendant denies the allegations in the Operative Complaint, deny any failure to comply with the laws
16 identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.
17 (*Id.*, at ¶ 11). Defendant admits to no claim by virtue of its agreement to settle this matter. (*Id.*) Because
18 Court approval of a PAGA settlement is required, the settlement is presented to this Court for review and
19 approval. (*Id.*, at ¶ 12.)
20

21 **V. SETTLEMENT NEGOTIATIONS**

22 Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
23 operative complaint and have made a thorough study of the legal principles applicable to the claims
24 asserted against Defendant. (Leviant Decl., ¶ 13.) Investigation included, *inter alia*, the exchange of
25 extensive data and discoverable information in preparation for the mediation session. The Parties have
26 analyzed time clock, pay and other data pertaining to Plaintiff and the Aggrieved Employees during the
27 relevant Settlement PAGA Period, including but not limited to the numbers of former and current
28 members Aggrieved Employees, pay periods, and average rate of hourly pay. Time and pay data were

used for Plaintiff's pre-mediation analysis. Sampling of pay periods was used to reduce costs and increase speed of data collection and review. (Leviant Decl., ¶ 20.) The margin of error calculation for the pay period sample in this case is as follows:

$$1.96 \sqrt{\frac{0.5(1-0.5)}{8,100}} \sqrt{\frac{8,100-1,966}{8,100-1}} = \text{margin of error}^2 = 0.0196 = 1.96\%$$

(*Id.*) With a sample of 1,966 pay periods, the margin of error, using the population adjustment factor, was no more than 1.96 percent.³ (*Id.*) In addition, Defendant also provided other data pertaining to Plaintiff and the Aggrieved Employees during the relevant PAGA Period, including but not limited documents reflecting wage and hour policies and practices during the PAGA Period (e.g., the relevant employee handbook). (Leviant Decl., ¶ 13.) Based on their investigation and evaluation of this case, Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues. (*Id.*)

On November 20, 2024, the Parties participated in an all-day mediation presided over by a professional and neutral mediator, Lisa Klerman, Esq. (Leviant Decl., ¶ 14.) The Parties engaged in extensive negotiations and exchange of data, documents and information prior to and during mediation. (*Id.*) The Parties were able to reach a settlement, which led to this Agreement to settle the Action. (*Id.*)

The Parties have memorialized the terms of the settlement in a long-form agreement. (Leviant Decl., ¶ 15.)

² The term "1.96" is derived from a standard deviation table for a 95% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of the margin of error because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

³ The margin of error formula does not require an adjustment factor for extremely large populations. (*Id.*) A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. (*Id.*) This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. (*Id.*) That is equal to 0.999995. (*Id.*) The square root is 0.9999975, which is indistinguishable from 1 when talking about a margin of error percentage even to the nearest tenth of a percent. (*Id.*) But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size. (*Id.*)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to law enforcement. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

“Because an aggrieved employee’s action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited exceptions, “[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian*, — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

“The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal. 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell previously within the exclusive domain of State enforcement, the California Supreme Court explained that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative action is therefore a type of *qui tam* action.”).

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be

1 reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent
2 purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D.
3 Cal. 2016) (“By providing fair compensation to the class members as employees and substantial
4 monetary relief, a settlement not only vindicates the rights of class members as employees, but may have
5 a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).

6 *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to
7 measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with
8 federal courts, concluded that the class action factors are appropriately considered, along with a
9 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
10 violations, deter future ones, and to maximize enforcement of state labor laws.”

11 The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a
12 class action settlement are well understood. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held
13 that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
14 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
15 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
16 small.”⁴ *Id.* at 1801. The court should also consider the expense, complexity and likely duration of
17 further litigation. *Dunk*, 48 Cal. App. 4th at 1801. “It is, of course, the strong public policy of this state to
18 encourage the voluntary settlement of litigation.” *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).
19 Finally, these factors are not exclusive and the court is free to balance and weigh, based on
20 circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

21 While class settlement factors provide some guidance as to how a Court may approach the
22 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
23 action settlements that must be recognized. Unlike a class action settlement, the scope of release
24 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
25 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
26 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the nonparty employees, because they were not given
27

28 ⁴ PAGA provides no notice or claim procedures as exist in class action cases.

1 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
2 remedies other than civil penalties.” *See id.*, at 987. Thus, the scope of a release in a PAGA settlement is
3 confined to PAGA penalties, and not related individual claims available under the Labor Code.⁵

4 Applying the above standards to this Settlement, the Settlement meets all criteria for approval.

6 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

7 Applying the class settlement fairness factors discussed above – limited to those compatible with
8 the unique features of PAGA claims – the proposed settlement embodies all of the key features of a
9 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

10 Plaintiff and Plaintiff’s counsel have diligently investigated the claims in this matter. (Leviant
11 Decl., ¶ 18.) Plaintiff and Counsel concluded, after taking into account the disputed factual and legal
12 issues involved in this Action, the substantial risks attending further prosecution, including risks related
13 to the outcome of possible summary judgment efforts, and the substantial benefits to be received
14 pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on
15 the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and
16 reasonable. (*Id.*) Plaintiff’s Counsel brought to bear a great deal of experience with wage and hour
17 actions in negotiating the settlement of this case. (*Id.*)

18 Resolution at this time will forestall the need for additional expensive and time-consuming
19 litigation that could very well result in an outcome less satisfactory than that proposed under this
20 settlement. (Leviant Decl., ¶ 19.) But, before any other consideration, we have agreed to this settlement
21 because it is objectively reasonable. (*Id.*) The potential for resolution benefits the Aggrieved Employees
22 and the State of California, since they do not have to wait additional years for a similar recovery. (*Id.*)
23 The efficiency of this litigation benefits the Court, the parties and their counsel. (*Id.*) A settled
24 resolution now is the most realistic method for addressing the claims raised in this matter.

25
26
27 ⁵ This is contrasted with the much broader release permitted in a class action context, which may be
28 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

1 Plaintiff's counsel have engaged in the necessary investigation in this case that made it possible
2 to exercise informed judgment in those aspects of the settlement process in which we were involved.
3 (Leviant Decl., ¶ 20.) The Defendant in this matter produced important information, pay and time data
4 for a random sample of about 25% of the total pay periods. (*Id.*) That information, coupled with other
5 data provided, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement; Plaintiff
6 had more than enough information upon which to evaluate its reasonableness. (*Id.*)

7 Here, the expense, complexity and likely duration of future litigation was to some extent an
8 unknown. (Leviant Decl., ¶ 21.) However, what is certain is that to adequately establish the
9 foundational violations that would support any penalty award, significant time and expense would be
10 invested. (*Id.*) To adequately establish that Aggrieved Employees experience the alleged violations, and
11 at what frequency, the Aggrieved Employees would need to be interviewed in a systematic fashion. (*Id.*)
12 The process would be expensive and time-consuming. (*Id.*) But doing so would have been required,
13 since frequency of violations would need to be established before any penalties could be recovered. (*Id.*)
14 As to claims such as meal period and rest break violations, the decisions of Aggrieved Employees are a
15 major factor in assessing liability. (*Id.*) Thus, even if records show a facially non-compliant meal
16 period, no penalty could be assessed automatically. (*Id.*) In sum, the evidence collected to date leads
17 Plaintiff to conclude that, to the extent violations occurred, a fact which Defendant disputes, the
18 violations were *not* systematic and *not* uniform across all of Defendant's employees who worked during
19 the PAGA period. (*Id.*) With these considerations in mind, the amount of the Settlement is reasonable.
20 (*Id.*)

21 **A. The PAGA Penalties Provide Genuine and Meaningful Relief to the LWDA and**
22 **Aggrieved Employees Consistent with the Dual-Purpose of PAGA**

23 The PAGA Penalties, pursuant to PAGA and the terms of the Agreement, will be allocated to the
24 LWDA and all Aggrieved Employees, with seventy-five percent allocated to the former and twenty-five
25 percent allocated to the latter. (Leviant Decl., ¶ 22.)
26
27
28

1 The PAGA Penalties, which are estimated to be \$62,521.10⁶, provide genuine and meaningful
2 relief to the LWDA and all alleged Aggrieved Employees consistent with the dual-purpose of PAGA
3 because it both redresses the alleged Aggrieved Employees for the Labor Code violations they suffered
4 from throughout their employment with Defendant and deters Defendant from violating the Labor Code
5 in the future, in light of the long-term, costly process required to litigate, mediate, and ultimately settle
6 the Action. (Leviant Decl., at ¶ 23.) For these reasons, the PAGA Penalties amount to genuine and
7 meaningful relief consistent with the underlying purpose of PAGA. (*Id.*)

8 **B. The PAGA Penalties Are Reasonable Pursuant to Labor Code § 2699(e)**

9 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
10 Labor Code § 2699(e) states: “For purposes of this part, whenever the [LWDA] has discretion to assess a
11 civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and
12 conditions, to assess a civil penalty...[A] court may award a lesser amount than the maximum civil
13 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
14 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
15 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or
16 circumstances justify reduction, or where such award is unreasonable and/or excessive.

17 The PAGA Penalties are also reasonable in light of the potential verdict value of all claims
18 released. Indeed, the Agreement contains a release of all PAGA claims that arise or could arise from the
19 facts underlying the Operative Complaint and PAGA Notice, including those related to unpaid wages,
20 including minimum wages, overtime compensation, meal period premiums, rest break premiums and
21 unreimbursed business expenses. (Leviant Decl., ¶ 24.) These claims served as the basis of the alleged
22 Aggrieved Employees’ PAGA claims. (*Id.*)

23 For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be about 8,100
24 total for the 162 Aggrieved Employees. (*Id.* at ¶ 21.) Using the most straightforward formulation of
25 applying the “catch-all” \$100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period,
26

27 ⁶ The PAGA Penalties equal the Gross Settlement Amount (\$392,500.00) less the PAGA Counsel Fees
28 Payment (\$130,833.33), PAGA Counsel Litigation Expenses Payment (\$18,000.00), and Administration Expenses
Payment (\$4,750.00).

1 the total penalty exposure is approximately \$810,000.00. (*Id.*)

2 In addition, with assistance from Plaintiff's data consultant, and after a thorough review of
3 evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel
4 separately estimated the plausible maximum potential PAGA exposure, on a penalty-by-penalty basis, to
5 be approximately **\$426,200.00**, which includes many overly optimistic assumptions about the ability to
6 prove the frequency of violations for all Aggrieved Employees who allegedly experienced issues. (*Id.*)
7 The settlement is approximately **32%** of that optimistic but plausible exposure calculation, described
8 below:

- 9 • Failure to compensate for unpaid wages based on off-the-clock work: Off-the-clock work is
10 heavily disputed in the case. It is alleged that employees had to wait an unreasonably amount
11 of time in line to clock in, including longer waits on occasions when the timeclock
12 malfunctioned. Clock-in delays do not appear to have a high likelihood of success. The
13 plausible exposure is estimated to be \$81,000.00 (8,100 total pay periods × \$100 penalty ×
14 0.1), based on an estimation of excessive waits for some of the workforce in 10% of the pay
15 periods. This is a high-risk theory of recovery.
- 16 • Regular Rate Calculation Errors: Data analysis showed a tiny, potential error in the
17 calculation of the regular rate of pay, assuming that a December "bonus" was non-
18 discretionary. However, Defendant provided compelling information that the "bonus" was a
19 holiday bonus that would not impact the regular rate of pay. The exposure is estimated to be
20 negligible.
- 21 • Rounding: Data analysis showed underpayments due to apparent rounding of time punches.
22 Rounding only occurred in 2023. However, even though the number of employees
23 underpaid by rounding was 45.2%, against 12.9% who were overpaid, the actual
24 underpayments only occurred in 260 shifts. Assuming each underpayment fell in a discrete
25 pay period, the plausible exposure is estimated to be \$26,000.00 (260 total pay periods ×
26 \$100 penalty). Since rounding has yet to be addressed by the California Supreme Court in
27 *Camp v. Home Depot*, a 50% risk reduction is also applied for an effective exposure of
28 \$13,000.

- 1 • Failure to provide meal periods: Assuming that facial violations in time records all result in a
2 penalty, a generous assumption given that employee choice can be a significant factor, the
3 calculated maximum exposure is just \$10,800.00 (216 total violations × \$50 penalty).
4 Defendant’s meal period compliance, on the fact of its records, was very high. The exposure
5 assumes one facial violation per pay period, which overstates the exposure.
- 6 • Failure to provide rest breaks: It was alleged that Defendant did not allow employees to
7 leave the premises for rest breaks. Defendant disputed this allegation, arguing that
8 employees and supervisors would testify that this was not accurate. Given the absence of any
9 record to establish missed rest breaks and the need to rely heavily on Aggrieved Employee
10 testimony, it is estimated that this claim could support, at best, an exposure of \$81,000.00
11 (8100 pay periods × 0.1 risk reduction × \$100.00).
- 12 • Unreimbursed business expenses: Plaintiff alleged that Defendant did not reimburse
13 purchases of steel-toed boots. Defendant did provide a stipend, but it is disputed whether it
14 was necessary for employees to spend more. Based on an estimate of 320 purchases (two
15 pairs per aggrieved employee), this results in a maximum exposure of \$32,000.00 (320 total
16 pay periods × \$100 penalty). Defendant contends that any incurred business expenses were
17 highly individualized and, if business expenses were incurred, employees were reimbursed.
- 18 • Failure to timely pay final wages: It is estimated that the maximum exposure for this claim is
19 \$5,900 (59 former employees × \$100 penalty).
- 20 • Failure to furnish accurate itemized wage statements: It is estimated that the maximum
21 exposure for this claim is \$202,500.00 (8,100 total pay periods × \$250 penalty × 0.1). This
22 claim is based on the unpaid wage claims, which makes it entirely derivative as to that
23 violation. Thus the \$250 penalty may not be recoverable due to the “stacking” of penalties
24 for the same underlying theory of recovery.

25 (See, Leviant Decl., ¶ 21.)

26 The amount of the settlement must then be viewed in light of the potential risks in continuing to
27 litigate, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff
28 prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil

1 penalties, Defendant's defenses, and the fact that the ultimate purpose of the Action is to obtain genuine
2 and meaningful relief for the LWDA and, secondarily, the Aggrieved Employees. (Leviant Decl., ¶ 25.)

3 If \$100 per pay period is used as a measure of the maximum reasonable exposure, that upper
4 exposure is **\$810,000**. As noted above, the calculated exposure is lower, at **\$426,200.00**. One issue that
5 has yet to be conclusively determined is whether a penalty for each type of alleged violation can be
6 collected per employee per pay period, or whether so-called "stacking" is not permitted.⁷ The calculated
7 value allows for stacking of *different* penalties, but no stacking for multiple instances of a single type of
8 violation in a pay period (i.e., if there are two meal period violations in the records for an employee in
9 one pay period, one penalty is counted). The assumed violation rate is very high, given the difficulty of
10 proof. One rest period penalty is assumed for 100% of Aggrieved Employees. Based on observed meal
11 period violations, 216 pay periods were treated as giving rise to a penalty, but multiple meal period
12 violations occurring for one employee in one pay period would reduce that number, as would employee
13 choice issues. Approximately ten percent of all pay periods are assumed to include unpaid time due to
14 off-the-clock delays (since not every employee would experience time clock delays, given that earlier
15 arrivers would be first to the timeclocks or so close to first that they suffered no harm), and the wage
16 statement penalty is assumed to track that rate as a derivative claim. Regular rate issues are also a wage-
17 payment based violation, so stacking is not assumed, but it does improve the chances of proving a wage
18 payment-based penalty event. However, regular rate issues were deemed negligible, since the bonus was
19 likely a holiday bonus. (Leviant Decl., ¶ 21.)

20 The amount allocated to PAGA penalties is with the range of reasonableness. First, of the
21 alleged violations, the allegation of unpaid wages due to regular rate calculation errors was the claim
22 with the simplest legal underpinnings. However, the *legal* question of whether the bonuses were non-
23 discretionary would still need to be resolved in favor of Plaintiff. Rounding was also a claim with a
24 strong legal basis, but it occurred in only one year, impacting very few pay periods. Other alleged
25 violations are progressively less suitable to simple proof at trial. Meal period violations based on facial
26

27 ⁷ Under the revised PAGA statute, the "stacking" issue is resolved, but this matter was filed prior to
28 that statutory revision, and the "stacking" question under that version of the law has never been
conclusively resolved.

1 violations occurred in under about 2% of shifts, if every potential violation was not by choice, *and*
2 premium payments were made in many instances. The employee choice issue greatly complicates proof.
3 Rest period violations were based on an alleged deficient policy, but Defendant strongly disputed that
4 this practice occurred. Off-the-clock allegations are based on the claim that employees waited in line to
5 clock in several minutes. Based on Defendant's position regarding the issue and factually inconsistent
6 statements from Aggrieved Employees, it is unclear whether any of these issues were significant. Again,
7 this claim depends heavily upon *consistent* testimony from aggrieved employees.

8 As to the nature and extent of the discovery or other investigation undertaken by the Plaintiff to
9 estimate the likelihood of proving those allegations at trial, as described above, a sizeable sample of time
10 and pay data was analyzed, along with a review of policy documents and interviews of Aggrieved
11 Employees. After looking at what was available in the data and the written wage and hour policies, the
12 differences between penalty claims amendable to proof by records (such as the regular rate
13 underpayment allegation) and claims heavily dependent upon testimony (such as the allegation of off-
14 the-clock work) were factored into the evaluation of the plausible exposure.

15 As to the likelihood that any violations would be proven to have been knowing and intentional, a
16 finding of "knowing and intentional" violations is unlikely, which must be viewed in the context of
17 Defendant's actions at the time. Defendant paid meal period premiums for some recorded meal period
18 violations, demonstrating an intent to comply with requirements. Even the regular rate issue is subject to
19 factual issues, since it is not beyond dispute that the additional compensation created a regular rate issue.
20 As noted above, federal courts found that a PAGA allocation, even if a small portion of the total
21 settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the
22 deterrent purpose of PAGA. See, e.g., *O'Connor*, 201 F.Supp.3d at 1135. *Moniz* approved of that
23 approach. *Moniz*, 72 Cal. App. 5th at 77. (Leviant Decl., ¶ 18(f).)

24 These same considerations support the idea that imposition of the maximum penalties would be
25 unjust. Defendant appears to have made efforts to operate in a lawful manner, including because they
26 had compliant written policies and meal period premiums were paid out. If Plaintiff were somehow able
27 to prove up penalties of more than \$400,000 at trial, the penalty could easily be seen as unnecessarily
28 unjust in light to Defendant's overall efforts to operate in compliance with California's wage and hour

1 laws. There is no evidence that a court or a commissioner had informed Defendant that their conduct
2 violated the Labor Code. *Amaral*, 163 Cal. App. 4th at 1209; *Willis*, 2013 WL 6053831, *7-8 (E.D. Cal.
3 2013). (Leviant Decl., ¶ 18(g).)

4 Other than the discussion above, the only other factor that could be considered when evaluating
5 the fairness of the agreed-upon penalties is the small size of the business. An unmoderated penalty could
6 potentially result in financial damage to the business that could not be sustained, or might result in a
7 reduction in the workforce, which would be antithetical to the concept of protecting employees.

8 **1. The Total Amount Offered in Settlement is \$136,000.00**

9 The settlement provides a monetary benefit that falls well within “the range of an acceptable
10 settlement” under the circumstances, which is the standard on which the instant Settlement must be
11 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
12 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151
13 F.3d 1234, 1242 (9th Cir. 1998).

14 Under the Agreement, Defendant shall pay a maximum sum of \$136,000.00. Defendant argued
15 that numerous individualized inquiries would be needed to determine liability on Plaintiff’s claims,
16 including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendant, (2)
17 whether each individual took a particular meal period or rest break on a particular occasion, (3) whether
18 the meal period was waived or voluntarily not taken, and (4) where the individual skipped the meal or
19 rest period, or *why* it was skipped for each of the allegedly Aggrieved Employees.

20 **2. Payment of At Least \$62,521.10 in Penalties**

21 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
22 **\$62,521.10**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
23 PAGA statute, “unjust, arbitrary, or oppressive.” Labor Code § 2699(e)(2).

24 *a) The LWDA shall receive at least \$46,890.82*

25 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
26 **\$46,890.82** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the “provisions of the
27 settlement relating to health and safety laws shall be submitted to the division at the same time that they
28 are submitted to the court. This requirement shall be construed to authorize and permit the division to

comment on the settlement provisions, and the court shall grant the division's commentary appropriate weight.” The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.

b) Aggrieved Employees shall receive at least \$15,630.27

Approximately 162 Aggrieved Employees shall receive at least **\$15,630.27** (25% of the penalty) under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties recovered under PAGA are *not* surrogate individual damages. Instead, the amount available to Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

3. Pay Periods and Aggrieved Employee Count Pursuant to CMO ¶ H.3.a.i

During the PAGA Period, there were approximately 162 allegedly Aggrieved Employees who worked approximately 8,100 Pay Periods within the PAGA Period. (Leviant Decl., ¶ 21.)

4. The Average Recovery for Aggrieved Employees Pursuant to CMO ¶ H.3.a.v

With \$15,630.27 to be distributed to the 162 Aggrieved Employees who worked about 8,100 Pay Periods, the value per Pay Period is \$1.93, which is $\$15,630.27 \div 8,100$. The average payment per Aggrieved Employee is \$96.48, which is $\$15,630.27 \div 162$. (Leviant Decl., ¶ 23.)

C. The Presence of a Government Participant Weighs in Favor of Approval

As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on settlements. The LWDA was notified of the Settlement. (Leviant Decl., ¶ 45.)

D. PAGA Counsel Are Experienced and Negotiated Aggressively

The court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 14, 18.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the Aggrieved Employees. PAGA Counsel are experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

1 **E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed**
2 **Settlement, Including the Requested Fees and Costs**

3 In addition to the factors presented above, the proposed settlement does not possess any obvious
4 deficiencies with respect to its other terms, including the agreed-upon fees and costs.

5 **1. Fees and Costs**

6 Courts in the Ninth Circuit and California generally use the “percentage method” rather than the
7 lodestar approach when awarding attorneys’ fees in a common fund type settlements. *See* 7 Witkin,
8 B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage
9 method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer
10 who recovers a common fund for the benefit of persons other than himself or his client is entitled to a
11 reasonable attorney’s fee from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,
12 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

13 While this is not a class action, the custom and practice in class actions is to award approximately
14 one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
15 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
16 fee awards in class actions average around **one-third** of the recovery.”) (emphasis added). The proposed
17 attorney fee award here is 33 1/3% of the Gross Settlement Amount, an amount reasonably comparable
18 to “average” fees awarded in California state court class action cases used for comparison purposes here.
19 *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is **not** a class action. It is more akin to contingent
20 representation with an additional requirement of Court review due to the *qui tam* nature of PAGA claims.
21 The California Supreme Court has removed any lingering doubt about the use of the percentage of the
22 fund method to award attorney’s fees in California Courts, endorsing and encouraging that method.
23 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁸

24 Thus, courts regard circumstances in which class counsel’s work is wholly contingent, such as in
25

26 ⁸ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
 to bar its usage generally in common fund cases.” *Laffitte*, at 501.

1 class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated
2 fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This
3 matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient.
4 The actual lodestar incurred by Plaintiff's counsel to date is no less than \$79,837.50, not including
5 unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-38.) Counsel for Plaintiff invested time
6 evaluating data before the negotiations in this matter and in preparing for settlement discussions with
7 Defendant's counsel. (*Id.* at ¶ 20.) Those efforts led to this reasonable settlement. (*Id.*) Plaintiff's
8 Counsel requests a fee of \$45,333.33, as specified in the Agreement, which represents a negative
9 multiplier of 0.57 (looking only at billed time). (Leviant Decl., ¶ 39.)

10 The Agreement also provides for the award of actual costs, capped at \$15,000.00 based on
11 Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this lawsuit on a
12 contingency basis. (Leviant Decl., ¶ 40.) Actual costs are above the capped amount, thus consistent with
13 the Settlement, a cost award of \$15,000.00 is requested. (Leviant Decl., ¶ 40 and Exh. 2.)

14 2. Administration Fees Are Very Reasonable

15 Administration will be completed by Phoenix Settlement Administrators for \$4,000.00, a very
16 reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶ 16.)

17 IX. CONCLUSION

18 For the above reasons in fact and law, Plaintiff requests this court enter an order approving the
19 settlement memorialized in the Agreement.
20

21 Respectfully submitted,

22 Dated: April 3, 2025

23 **MOON LAW GROUP, PC**

24 By: 
25 Kane Moon
26 H. Scott Leviant
27 Mariam Ghazaryan

28 Attorneys for Plaintiff