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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BRANDON MARTIN, an individual on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

SAN ANTONIO POST ACUTE LLC, a
California limited liability company; and DOES
1-50, Inclusive;

Defendants.

Case No. CIVSB2317704

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Date: October 28, 2024

Time: 8:30 a.m.

Judge: Hon. Jeffrey R. Erickson

Department: S14

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
A.	Plaintiff’s Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant	2
III.	TERMS OF THE PAGA SETTLEMENT	3
A.	The Gross Settlement Amount	3
B.	Allocation of Aggrieved Employee Payments	4
C.	Funding and Distribution	4
D.	Release of Claims	5
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	5
A.	The Gross Settlement Amount is Fair and Reasonable	6
i.	Estimated Penalties for Meal Period Violations	7
ii.	Estimated Penalties for Failure to Properly Calculate the “Regular Rate of Pay”	7
iii.	Estimated Liability for Unpaid Wages	7
iv.	Estimated Liability for Defendants’ Violation of Labor Code §2802	8
B.	The Gross Settlement Compares Favorably To The Likely Recovery	8

///

1	C. The Remaining Settlement Terms Are Fair and Reasonable	10
2		
3	V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE	10
4		
5	A. The Requested Attorneys' Fee is Fair and Reasonable	10
6		
7	B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	12
8		
9	VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE	13
10		
11	VII. CONCLUSION	14
12		

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TABLE OF AUTHORITIES

CASES

<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715, 726 (2004).....	13
<i>Bernstein v. Virgin America, Inc.</i> (2021) 3 F.4th 1127, 1144	6
<i>Boyd v. Bank of America</i> , 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	11
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	8
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	9
<i>Clark v. American Residential Services, LLC</i> , 175 Cal. App. 4th 785, 804-805 (2009).....	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1800-1801.....	6
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i> , 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	12
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047, *4 (C.D. Cal. 2011)	9
<i>Gola v. University of San Francisco</i> , San Francisco Superior Court Case No. CGC-18-5655018.....	9
<i>Harris v. Marhoefer</i> , 24 F.3d 16, 19 (9th Cir. 1994).....	12
<i>Hartless</i> , 273 F.R.D. at 645-46	12
<i>Hibbs-Rines v. Seagate Technologies</i> , 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	9
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	11
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348, 381 (2014).....	1
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> , 29 Cal App 5th 778, 788 (2018).....	9
<i>Kim v. Reins International California, Inc.</i> (2020) 9 Cal.5th 73, 88;.....	6
<i>Laffitte v. Robert Half Int’l Inc.</i> , 1 Cal.5th 480, 504, 506 (2016).....	11-12
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 77, 88.....	5-6
<i>Pellegrino v. Robert Half Intern., Inc.</i> , 182 Cal.App.4th 278 (2010).....	11
<i>Rider v. City of San Diego</i> , 11 Cal. App. 4th 1410, 1423 n.6 (1992).....	12
<i>Rodriguez v. West Publ’g Corp.</i> , 563 F.3d 948, 958-59 (9th Cir. 2009).....	13
<i>Taylor v. FedEx Freight, Inc.</i> , 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	12

///

1	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	11
2	<i>Wesson v. Staples the Off. Superstore</i> , 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	9
3	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224, 254 (2001)	11
4	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531, 549.....	6
5	<i>Zayerz v. Kiewit Infrastructure West</i> , 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	8
6	<i>ZB, N.A. v. Superior Court</i> 8 Cal. 5th 175, 182 (2019).....	1, 3-4
8	RULES, CODES, AND STATUTES	
9	<i>Cal. Lab. Code</i> § 201.....	6
	<i>Cal. Lab. Code</i> § 202.....	6
10	<i>Cal. Lab. Code</i> § 203.....	6
	<i>Cal. Lab. Code</i> § 204.....	6
11	<i>Cal. Lab. Code</i> § 226.....	9
	<i>Cal. Lab. Code</i> § 226.7.....	6
12	<i>Cal. Lab. Code</i> § 246.....	6
13	<i>Cal. Lab. Code</i> § 382.....	10
	<i>Cal. Lab. Code</i> § 558.....	6
14	<i>Cal. Lab. Code</i> § 512.....	6
	<i>Cal. Lab. Code</i> § 1194.....	6
15	<i>Cal. Lab. Code</i> § 1197.....	6
	<i>Cal. Lab. Code</i> § 1197.1.....	6
16	<i>Cal. Lab. Code</i> § 1198.....	6
17	<i>Cal. Lab. Code</i> § 2698 et seq.....	2
	<i>Cal. Lab. Code</i> § 2699 et seq	1-6, 8-10
18	<i>Cal. Lab. Code</i> § 2802.....	6, 8

1 **I. INTRODUCTION**

2 Plaintiff Brandon Martin (“Plaintiff”) seeks approval of the PAGA Settlement Agreement
3 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 302
4 “Aggrieved Employees,” defined as all non-exempt employees who worked for San Antonio Post
5 Acute LLC (“Defendant”) in California at any time between May 23, 2022 through June 23, 2024.
6 (“PAGA Period”). Agreement at §§ I(B); I(F); I(S). This is only a settlement of the PAGA claim
7 for civil penalties and is not a class settlement and does not release the individual wage claims, if
8 any, of the affected employees other than Plaintiff himself. Cal. Lab. Code § 2699(g)(1); *Iskanian*
9 *v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
10 (2019) (unpaid wages are not recoverable under PAGA).

11 If approved, the Aggrieved Employees and the California Labor Workforce and
12 Development Agency (“LWDA”) will share a payment for PAGA Payment of Eighty-Nine
13 Thousand Five Hundred Dollars and Zero Cents (\$89,500.00). After deducting any Court-approved
14 PAGA Counsel Award, Service Award, and the Claims Administration Costs, the PAGA Payment
15 shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees (“Aggrieved
16 Employee Payment”). Agreement at § I(Q).

17 An objective evaluation of the proposed settlement confirms that the relief negotiated on
18 behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement
19 is a product of informed, adversarial, and non-collusive and mediated negotiations between
20 experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA
21 settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court
22 grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 9.

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27 _____
28 ¹ The Agreement is attached as Ex “1” to the Declaration Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.

1 **II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil**
3 **Action Against Defendant**

4 On May 23, 2025, Plaintiff, on behalf of himself and on behalf of other Aggrieved
5 Employees, served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") and
6 draft complaint memorializing claims against Defendant for alleged violations of the California
7 Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure
8 to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and
9 overtime wages; failure to provide accurate itemized wage statements; failure to timely pay wages
10 due during, and upon termination of employment, and unpaid sick pay. (LWDA Case No. LWDA-
11 CM-956982-23). JCL Dec., ¶ 10.

12 The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal.
13 Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to
14 investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any
15 intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 11.

16 On July 31, 2023, Plaintiff filed a representative action complaint against Defendant in San
17 Bernardino Superior Court, Case Number CIV SB 2317704 (the "Action"). The Action alleged a
18 single cause of action against Defendant for violations of the Private Attorneys General Act at Cal.
19 Lab. Code §§2698, *et seq.* JCL Dec., ¶ 12.

20 On April 23, 2024, the Parties participated in an all-day mediation presided over by Hon.
21 Brian C. Walsh (Ret.), an experienced mediator of wage and hour representative actions. In advance
22 of the with the mediation, Defendant provided Plaintiff with sufficient information to properly
23 evaluate Defendant's potential liability exposure. Among the data and documents Defendant
24 produced included, but was not limited to, the total number of Aggrieved Employees, total number
25 of current Aggrieved Employees, total number of Pay Periods worked by Aggrieved Employees
26 within the PAGA Period, information related to non-discretionary bonuses, employee handbooks,
27 and time and payroll data. JCL Dec., ¶ 13.

28 The mediation resulted in a settlement and was memorialized in the form of a Memorandum

1 of Understanding (“MOU”). After reaching an agreement in the principle, the Parties drafted and
2 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
3 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation
4 – including the risk of Plaintiff not being able to maintain representative claims, the difficulty of
5 proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential defenses, and the
6 significant delay and potential appellate issues inherent to litigation – and was reached after
7 extensive arm’s length negotiations, with the assistance of the Mediator. JCL Dec., at ¶ 14.

8 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
9 by Plaintiff on behalf of himself, the LWDA, and the State of California. This is only a Settlement
10 of the PAGA claims for civil penalties and is not a class settlement and does not release the
11 individual claims, if any, of the Aggrieved Employees. This Settlement does not release any claim
12 that is not a PAGA claim.² Nor does this Settlement waive Defendant’s right to assert *res judicata* or
13 other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 15.

14 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
15 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
16 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
17 Plaintiff will submit to the LWDA a copy of the Court’s judgment and order approving the
18 Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 16.

19 **III. TERMS OF THE PAGA SETTLEMENT**

20 **A. The Gross Settlement Amount**

21 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
22 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
23 payment in the amount of One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) to
24 resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of: i) a PAGA
25 Counsel Award in the amount of Eighty Thousand Dollars and Zero Cents (\$80,000.00), comprised
26 of one-third of the Gross Settlement Amount (estimated to be approximately \$60,000.00), and
27

28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 reimbursement of incurred litigation expenses in an amount not to exceed Twenty Thousand Dollars
2 and Zero Cents (\$20,000.00); ii) a Service Award to Plaintiff of up to Five Thousand Dollars and
3 Zero Cents (\$5,000.00); and iii) Settlement Administration Costs which will not exceed Five
4 Thousand Five Hundred Dollars and Zero Cents (\$5,500.00). Agreement generally at § III(I)(8)-
5 (10). After these deductions, the amount remaining is the “PAGA Payment,” which is estimated to
6 be \$89,500. JCL Dec., ¶ 17.

7 Once the PAGA Counsel Award, Service Award, and Settlement Administration Costs are
8 deducted from the Gross Settlement Amount, the remaining funds, estimated to be \$89,500.00
9 comprise the PAGA Payment. Of the PAGA Payment, seventy-five percent (75%) shall be paid to
10 the LWDA (the “LWDA Payment”) and the remaining twenty-five percent (25%) shall be paid to
11 the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § I (Q). This 75/25
12 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th
13 175 (2019).

14 **B. Allocation of Aggrieved Employee Payment**

15 The Aggrieved Employee Payment will be calculated by dividing the amount of the
16 Aggrieved Employees’ 25% share of PAGA Payment (\$22,375.00) by the total number of PAGA
17 Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the
18 result by each Aggrieved Employee’s PAGA Pay Periods. Agreement at § III(I)(1). The PAGA
19 Period is the period between May 23, 2022, to June 23, 2024. Agreement at § I(S).

20 At the time of the parties’ settlement of this action, Defendant estimated that there were
21 approximately 302 Aggrieved Employees who worked approximately 6,000 pay periods during the
22 PAGA Period based on company records. Agreement at § III(A)(2).³

23 **C. Funding and Distribution**

24 Provided that an order approving this Settlement is entered by the Court, Defendant shall
25 fund the Gross Settlement Amount within the earlier of sixty (60) days after approval of this
26

27 ³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
28 10% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for the
number of Pay Periods over 110% of 6,000. For example, if the total Pay Periods in the PAGA Period are 115% of
6,000, the Gross Settlement Amount shall increase by 5%. Agreement at § III(A)(2).

1 Settlement or December 23, 2024. Agreement at § I(I); III(A)(3). No later than five (5) calendar days
2 after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the
3 Aggrieved Employee Payment via First-Class U.S. Mail to the Aggrieved Employees' last known
4 mailing address, Aggrieved Employee Payment. Agreement at § III(I)(4). Settlement checks issued
5 to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by
6 the Settlement Administrator. Agreement at § III(I)(6). If the check remains uncashed by the
7 expiration of the 180-day period, the Settlement Administrator shall cause the aggregate sum
8 represented by those uncashed checks to be sent to the State Controller's Unclaimed Property Fund
9 in the name of the Aggrieved Employee who did not claim the funds. Agreement at § III(I)(6). The
10 Aggrieved Employee Payments are 100% penalties and interest and shall be reported using IRS
11 Form 1099s. Agreement at § III(I)(2).

12 **D. Release of Claims**

13 Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiff, the LWDA,
14 and the State of California shall release the Released Parties (as defined in the Agreement) from the
15 Released PAGA Claims which include all PAGA claims alleged in the Operative Complaint and
16 Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly
17 excluding all other claims, including claims for vested benefits, wrongful termination,
18 unemployment insurance, disability, social security, workers' compensation, and PAGA claims
19 outside of the PAGA Period. Agreement at §§ I(X); III(B).

20 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

21 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
22 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
23 agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco*
24 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA
25 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
26 safeguard." (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
27 quotations omitted.) "The Supreme Court has also observed that trial court approval ensures that
28 any negotiated resolution is fair to those affected," leading the Court in *Moniz* to determine that

“adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words, “[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$180,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant’s *maximum* liability exposure is estimated at approximately \$708,050 in PAGA penalties. JCL Dec., ¶ 18. Plaintiff’s consultant estimated Defendant’s exposure as follows:

Claim	Penalty Amount ⁴	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations Cal. Labor Code §§ 226.7 and 512</i>	\$50	915	15.6 % of PAGA Pay Periods	\$45,750
<i>Regular Rate of Pay Violations Cal. Labor Code §§ 510; 246; 226.7</i>	\$100	782	13% of PAGA Pay Periods	\$78,200
<i>Unpaid Wages Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558</i>	\$100	2,920	50%of PAGA Pay Periods	\$292,050
<i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	2,920	50% of PAGA Pay Periods	\$292,050

⁴ In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that “[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.” Therefore, Plaintiff used only penalties for initial violations.

1 JCL Dec., ¶ 19.

2 **i. Estimated Penalties for Meal Period Violations**

3 Plaintiff alleges that Defendant rounded meal periods, supported by data evidencing that
4 nearly 44% of all first meal periods were exactly 30 minutes in length. Based on this data, Plaintiff
5 alleges that Defendant implemented a practice of auto-deducting 30 minutes for fictitious meal
6 breaks from every shift, creating a paper trail of compliance and depriving employee of their breaks
7 and wages owed for time deducted. Defendant denies these allegations, contending that they
8 maintain compliant meal period policies and practices, that employees are responsible for recording
9 their own time, and that Defendant does not alter time records. Defendant also argues that it pays
10 meal period premiums, and a contention that it alters employees' time records is incongruous with its
11 documented history of paying meal period premiums when time records reflect non-compliant
12 breaks. Taking into account Defendant's defenses, Plaintiff applied a 25% discount to this claim.
13 Applying said discount, Plaintiff estimates Defendant's exposure for this claim to be approximately
14 \$45,750. JCL Dec., ¶ 20.

15 **ii. Estimated Penalties for Failure to Properly Calculate the "Regular Rate**
16 **of Pay"**

17 Plaintiff alleges that Defendant failed to include non-discretionary incentive compensation
18 when calculating the regular rate of pay for purposes of overtime, redeemed sick pay and meal
19 period premiums. Specifically, Plaintiff's expert found additional compensation identified as
20 "Bonus Flat," and "Angel Pay" that were not properly included in the regular rate of pay
21 calculation for purposes of calculating and paying overtime, meal period premiums, and sick pay.
22 Defendant contends that not all of the additional compensation listed can be properly categorized
23 as non-discretionary. Accordingly, Plaintiff applied a 20% discount to the projected penalties for
24 this claim. After applying a 20% discount, Plaintiff estimates Defendant's exposure for this claim
25 to be \$78,200. JCL Dec., ¶ 21.

26 **iii. Estimated Liability for Unpaid Wages**

27 Plaintiff alleges that Defendant failed to pay all minimum and overtime wages when he and
28 Aggrieved Employees worked off the clock. Specifically, Plaintiff alleged that he and other

1 Aggrieved Employees worked off the clock when they were required to undergo a pre-shift Covid
2 screening during a portion of the PAGA Period but were not compensated for this time. Defendant
3 contends that, as the PAGA Period does not start until May 2022, covid screenings ended soon after
4 this date. Taking Defendant's defenses into consideration, Plaintiff estimates Defendant's exposure
5 for this claim to be approximately \$292,050 in PAGA Penalties. JCL Dec., ¶ 22.

6 **iv. Estimated Liability for Defendants' Violation of Labor Code §2802**

7 Plaintiff alleged that Defendant required Plaintiff and the Aggrieved Employees to use their
8 personal cell phones and personal vehicles for Defendants' benefit. Specifically, Plaintiff and
9 Aggrieved Employees were required to use their personal cell phones to communicate with
10 Defendant to receive instructions about daily tasks, and to provide proof of their COVID-19
11 screening results. Plaintiff estimated that Defendants' total exposure for this claim was
12 approximately \$292,050 in penalties. This was calculated using a 50% violation rate for this claim
13 to reflect its belief that Aggrieved Employees incurred cell phone expenses approximately once per
14 month. JCL Dec., ¶ 23.

15 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

16 In light of the above, the Gross Settlement Amount is approximately 25% of Defendant's
17 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
18 of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties
19 is not a realistic outcome of the litigation because it fails to account for the risks of continued
20 litigation including, but not limited to, Defendant's defenses. *See, Zayerz v. Kiewit Infrastructure*
21 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant
22 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See Lab.*
23 *Code § 2699(f)(2)*. In other words, to recover any civil penalties, Plaintiff would be required to
24 prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
25 *Dist. LEXIS 13126*, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff
26 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
27 Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved
28 Employee was subject to the alleged Labor Code violation, which would be difficult to do, since

1 Defendant deny any liability or wrongdoing of any kind associated with the claims alleged in this
2 action. Thus, Defendant contended that Plaintiff would be required to “prove Labor Code violations
3 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
4 under PAGA.”; *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
5 2009). JCL Dec., ¶ 24. When “determining whether the employer committed Labor Code violations
6 with respect to each employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples*
7 *the Off. Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).

8 Finally, the maximum penalty figure does not consider that Courts have complete discretion
9 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
10 the facts and circumstances of the particular case, to do otherwise would result in an award that is
11 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
12 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
13 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
14 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
15 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
16 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
17 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
18 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
19 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
20 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
21 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
22 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
23 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
24 *see also, Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-
25 5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San
26 Francisco Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum
27 PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is
28 reasonable in light of Defendant’s arguments.

Given Defendant's defenses to the claimed Labor Code violations at issue, the risks and costs of continued litigation, and Defendant's financial condition, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 5, 25.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable. JCL Dec., ¶ 26.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in the amount of \$60,000.00 (one-third of the Gross Settlement Amount) and reimbursement of litigation costs not to exceed \$20,000.⁵ PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage and hour counsel. JCL Dec., ¶ 27.

A. The Requested Attorneys' Fee is Fair and Reasonable

The requested PAGA Counsel Award of \$80,000.00, comprised of \$60,000 for attorneys' fees and reimbursement of litigation expenses of up to \$20,000 is fair, reasonable, and justified by

⁵ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$10,311.98 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 the result achieved. Agreement at § III(I)(9); JCL Dec., ¶ 28. PAGA Counsel negotiated a recovery
2 of One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00), and this result justifies the
3 requested fees equal to one third of this recovery. This percentage is within the standard contingent
4 recovery percentage of one-third, and this percentage is what was expressly approved by the
5 Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case
6 was brought, the result was far from certain. Defendant's defenses to the merits of the case created
7 difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several
8 defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved
9 Employees. Defendant asserted that its employment practices complied with all applicable labor
10 laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the
11 Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant
12 maintains that these defenses have merit and therefore present a serious risk to recovery. The
13 Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade
14 Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal
15 issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 29.

16 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
17 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
18 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
19 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
20 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
21 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
22 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
23 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
24 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
25 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
26 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
27 a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

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As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is \$57,880.84. JCL Dec.at ¶¶ 6, 30-39; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negligible multiplier of 1.03 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$10,311.98 prosecuting this action (JCL Law Firm, APC - \$5,556.98, Zakay Law Group, APLC - \$4,755; JCL Dec. ¶¶ 7, 40; Zakay Dec., ¶¶ 6-7) PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 41.

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1 **VI. PLAINTIFF’S SERVICE AWARD IS FAIR AND REASONABLE**

2 Incentive payments are intended to “compensate class representatives for work done on
3 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
4 and, sometimes, *to recognize their willingness to act as a private attorney general.*” *Rodriguez v.*
5 *West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely
6 approve service awards to compensate named plaintiffs for the services they provide and the risks
7 they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004)
8 (upholding “service payments” to plaintiffs for their efforts in bringing class case). The factors
9 courts use in determining the amount of service awards include: (1) a comparison between the
10 service awards and the range of monetary recovery available to the class; (2) time and effort put into
11 the litigation; (3) whether the litigation will further the public policy underlying the statutory
12 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th
13 785, 804-805 (2009).

14 The Settlement provides for a Service Award of \$5,000 for Plaintiff. The Service Award
15 payment is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting
16 PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the
17 status of his case and the strategies for prosecuting the claims and agreeing to provide Defendant a
18 broad general release of all claims arising out of his employment. Plaintiff willingly came forward
19 to protect and advance the rights of the Aggrieved Employees on important legal disputes affecting
20 California employees. By way of example, Plaintiff assumed the serious risk of liability for
21 Defendant’s costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff
22 knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved Employees.
23 JCL Dec., ¶ 42.

24 Plaintiff’s efforts in bringing the lawsuit conferred a monetary benefit to 302 Aggrieved
25 Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve the
26 Service Award in accordance with the Settlement Agreement. Plaintiff and PAGA Counsel also
27 respectfully request approval of the requested Service Award in the amount of \$5,000.00 to Plaintiff.
28 JCL Dec., ¶ 43.

1 **VII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
3 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
4 submitted herewith.

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6 Dated: August 8, 2024

JCL LAW FIRM, APC

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8 By: 
9 Jean-Claude Lapuyade, Esq.
10 Attorney for Plaintiff
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