

KINGSLEY SZAMET
EMPLOYMENT LAWYERS
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

EMIL DAVTYAN, Esq. (SBN-299363)
emil@d.law
D.LAW, INC.
250 N. Madison Ave.
Pasadena, CA 91101
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiffs and the aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MANDY C. MENA; RAUL E. ZAMORA;
ANTONIO PEREZ; as individuals, on behalf
of the State of California, as a private attorney
general,

PLAINTIFFS,

v.

ADOBE COMMUNITIES; and DOES 1 thru
50, inclusive,

DEFENDANTS.

Case No. 23STCV28338

[Case Assigned for All Purposes to Hon.
Cindy Panuco in Dept. 224]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Declarations of Eric
B. Kingsley, Jodey Lawrence of Phoenix Class
Action Administration Solutions, and Plaintiffs
Mandy C. Mena, Raul E. Zamora, Antonio
Perez, in Support of Plaintiff's Motion for
Approval of Representative Action Settlement;
[Proposed] Order, and Judgment]*

Date: August 21, 2026
Time: 9:00 AM
Dept.: 224

Complaint Filed: October 20, 2022
Trial Date: None Set
Reservation No. 110594763679

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 21, 2026, at 9:00 AM in Department 21 of the
3 above-entitled court, Plaintiffs MANDY C. MENA; RAUL E. ZAMORA; ANTONIO PEREZ
4 will move the Court for an Order Granting Approval of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of Plaintiffs, all aggrieved employees, and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
8 and Authorities, the Declaration of Eric B. Kingsley, the PAGA Settlement Agreement (Exhibit
9 "1" to the concurrently filed Kingsley Declaration), all other papers and records on file in this
10 action, and on such oral and documentary evidence as may be presented at the hearing on this
11 Motion.

12
13 DATED: July 1, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

14
15
16 By: 

17 Eric B. Kingsley
18 Jessi Bulaon
19 Attorneys for Plaintiffs and all aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **V. INTRODUCTION**

3 Plaintiffs Mandy C. Mena, Raul E. Zamora, and Antonio Perez (“Plaintiffs”) submits this
4 Memorandum of Points and Authorities in support of Motion for Approval of Representative
5 Action Settlement. Plaintiffs and Defendant ADOBE COMMUNITIES (“Defendant”)
6 (collectively, the “Parties”) have reached a proposed settlement documented in the PAGA
7 Settlement Agreement (“Agreement”), attached to the concurrently-filed declaration of Eric B.
8 Kingsley.¹

9 This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699,
10 et seq. (“PAGA”). The Gross Settlement Amount is \$210,000.00. After deduction of attorney’s
11 fees and litigation expenses, litigation enhancement to Plaintiffs, and settlement administration
12 costs as discussed in the Agreement, the remaining amount to be divided between the Labor and
13 Workforce Development Agency (“LWDA”) and the aggrieved employees as required by Labor
14 Code section 2699(i) is \$115,152.19, with \$86,364.14 (or 75%) going to the LWDA and
15 \$28,788.05 (or 25%) distributed to the aggrieved employees.²

16 Plaintiffs requests that the Court “review and approve any settlement of any civil action
17 filed pursuant to this part” (*See* Lab. Code § 2699(1)(2).) If the Court deems the Settlement fair
18 and acceptable, Plaintiffs request that the Court: (1) enter an order approving the Settlement and
19 ordering the Parties to carry the terms of the Settlement Agreement; and (2) and enter a Final
20 Judgement thereon.³

21 **VI. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY**

22 A. Litigation Overview and Procedural History

23 Plaintiffs worked for Defendant as non-exempt employees.

24 On August 15, 2022, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Mandy C.

25
26 ¹ The Parties also entered into a separate confidential settlement for Plaintiffs’ individual claims.

27 ² Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

28 ³ Plaintiffs’ Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
LWDA’s website on the date this Motion is filed. Proof of submission of Plaintiffs’ Motion for Approval of
Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming
receipt can be provided to the Court upon request. (Kingsley Decl. ¶149.)

1 Mena gave written notice by online filing to the LWDA, setting forth the facts and theories of the
2 violations alleged against Defendant, paid the filing fee, and received an e-filing confirmation.
3 Plaintiff Mena also mailed notice to Defendant by certified mailing, return receipt requested, to
4 the address listed on the California's Secretary of State's website as the entity address for
5 Defendant Abode Communities. (Kingsley Decl. ¶5.)

6 On October 20, 2022, Mandy C. Mena, an individual on behalf of the State of California,
7 as a private attorney general, filed a Representative Action Complaint in Los Angeles Superior
8 Court, Case No. 22STCV33949, alleging a single cause of action under Labor Code § 2699, et
9 seq., the Private Attorneys General Act ("PAGA") for penalties pursuant to Labor Code § 201,
10 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. ("Mena Action") (Kingsley Decl.
11 ¶6.). Specifically, Plaintiff alleged that Defendant failed to pay all wages/overtime, failed to
12 provide compliant meal and rest periods, failed to reimburse necessary business expenses, failed
13 to provide accurate itemized wage statements, and failed to pay all wages due at
14 termination/resignation. (Kingsley Decl. ¶7.). Plaintiff alleges that this underlying conduct gives
15 rise to a claim pursuant to Labor Code §2699, et seq. (*Id.*)

16 On December 13, 2022, Defendant filed a Motion to Compel Individual Arbitration and
17 Stay or Dismiss Proceedings. (Kingsley Decl. ¶8.). On February 1, 2023, Plaintiff Mena filed an
18 Opposition to Defendant's Motion to Compel Arbitration. (Kingsley Decl. ¶9.). On February 15,
19 2024, the Court granted Defendant's motion. (Kingsley Decl. ¶10.). On March 22, 2024, Plaintiff
20 Mena initiated a Demand for Arbitration under ADR Services, Inc. (Kingsley Decl. ¶11.).

21 On November 20, 2023, Plaintiffs Raul E. Zamora and Antonio Perez, as individuals, on
22 behalf of the State of California, as their own private attorney general, filed a Representative
23 Action Complaint in Los Angeles Superior Court, Case No. 23STCV28338, alleging a single cause
24 of action under Labor Code § 2699, et seq., the Private Attorneys General Act ("PAGA") for
25 penalties pursuant to § 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802.
26 ("Zamora and Perez" Action"). (Kingsley Decl. ¶12.)

27 On February 6, 2024, Defendant filed a Motion to Compel Arbitration and Stay
28 Proceedings. (Kingsley Decl. ¶13.) Plaintiffs filed their Opposition to Defendant's Motion to

1 Compel Arbitration on July 12, 2024. (Kingsley Decl. ¶14.) On July 25, 2024, the Court granted
2 Defendant’s motion. (Kingsley Decl. ¶15.) On August 13, 2024, Claimants Antonio Perez and
3 Raul Zamora separately initiated a Demand for Arbitration under ADR Services, Inc. (Kingsley
4 Decl. ¶16.)

5 B. The Discovery Process and Mediation

6 The Parties have vigorously litigated this action. (Kingsley Decl., ¶17) Abode has moved
7 to compel Plaintiffs in each case to individual arbitration. (Kingsley Decl., ¶18)

8 On June 25, 2025, the Parties participated in a mediation before Kevin Barnes. (Kingsley
9 Decl., ¶19). Shortly thereafter, the Parties were able to reach a tentative settlement and formalized
10 the PAGA Settlement Agreement. (*Id.*)

11 As a part of the Settlement, Plaintiffs Mena, Zamora, and Perez filed a Consolidated First
12 Amended Representative Action Complaint on February 10, 2026, consolidating the Mena and
13 Zamora and Perez cases. (Kingsley Decl. ¶20.) The First Amended Complaint is the operative
14 complaint in the Action (the “Operative Complaint”). (*Id.*)

15 Although Defendant denies that it violated any pertinent law, it recognized the risks and
16 attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to
17 finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Kingsley
18 Decl. ¶21.) The Parties negotiated the terms and conditions of the Agreement and now present the
19 agreed-upon Settlement to the Court for Approval. (*Id.*)

20 **VII. PAGA ACTIONS AND THE REQUIREMENTS**

21 F. The PAGA Statutory Scheme

22 PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the
23 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489,
24 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A
25 plaintiff may not — and Plaintiffs here do not — bring a PAGA claim simply on his or her own
26 behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement
27 agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011);
28 *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

1 When an aggrieved employee brings a PAGA claim, “the government is always the real
2 party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th
3 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A]
4 PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff
5 that brings a PAGA claim represents “the same legal right and interest as state labor law
6 enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise
7 would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code
8 § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D.
9 Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their
10 cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties
11 recovered; thus, recoveries are principally for the state and only secondarily for aggrieved
12 employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is
13 properly conceived of as a private attorney general prosecuting violations of California’s labor
14 laws on behalf of the state.

15 An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab.
16 Code § 2699.3 (a)(1), which simply states:

17 “The aggrieved employee or representative shall give written notice by
18 certified mail to the Labor and Workforce Development Agency and the
19 employer of the specific provisions of this code alleged to have been
violated, including the facts and theories to support the alleged violation.”

20 Lab. Code § 2699.3 (a)(1)

21 As explained above, Plaintiff has complied with the notice requirements and has properly
22 pled a PAGA cause of action.

23 G. The Court Has Discretion When Awarding the Amount of Penalties

24 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
25 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
26 each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

27 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing
28

that Defendant violated the Labor Code.⁴ *Amaral v. Cintas Corp.* No. 2 163 Cal. App. 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3.

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code §2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional conduct giving rise to liability, and expressly deny that any employees suffered harm.

C. Standards for Settlement Approval

When approving a settlement of a PAGA action, the statute simply requires the Court to “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code § 2699(l)(2).) PAGA does not set forth standards for evaluating such settlements, and the California appellate courts have not weighed in on the issue. However, trial courts have approved PAGA settlements where the penalties are “genuine and meaningful” and “consistent with the underlying purpose” of the statute. (See *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class action procedural rules do not apply in PAGA cases, including the two-step preliminary and final approval process. Rather, the approval process consists of one step where the court decides if the settlement should go into effect.

VIII. THE SETTLEMENT

Defendant will pay the total sum of \$210,000.00 in full and final settlement of the PAGA claims alleged. (Kingsley Decl. ¶22., Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	\$210,000.00
PAGA Counsel Fees Payment:	\$69,972.00

⁴ See also *Willner v. Manpower Inc.*, *supra*. 35 F. Supp. 3d at 1136; *McKenzie v. Federal Exp. Corp.*, *supra*, 765 F.Supp.2d at 1232.

PAGA Counsel Litigation Expenses Payment:	\$18,125.81 ⁵
Administrator Expenses Payment:	\$4,750.00
Named Plaintiffs Enhancement:	\$15,000.00
PAGA Penalties:	\$115,152.19 <i>(\$86,364.14 to the LWDA; \$28,788.05 to remain in the Net Settlement Amount)</i>

(Kingsley Decl. ¶23., Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the aggrieved employees’ 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all aggrieved employees during the PAGA Period⁶, and then multiplying the result by each aggrieved employee’s PAGA Period Pay Periods. (Kingsley Decl. ¶25., Exhibit 1, ¶3.4.2.1.)

For settlement purposes, the PAGA Employees are defined as: “all non-exempt employees who worked at ABODE COMMUNITIES at any time during the PAGA Period.” (“PAGA Employees”). (Kingsley Decl. ¶27., Exhibit 1, ¶1.19.)

IX. ARGUMENT

F. The Court Should Approve the Agreement

The Parties recognize that in accordance with Labor Code §2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* 46 Cal.4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for primary or final approval. Nonetheless, in order to comply with the requirements of Labor Code §2699, the Parties submit the instant Motion and the Agreement (Exhibit “1” to the Kingsley Declaration) for Court approval.

G. The Risks of Moving Forward with Plaintiff’s PAGA Claim

⁵ The Agreement provides for counsel cost reimbursement of up to \$21,000. However, counsel’s final costs come out to \$18,125.81. The delta of \$2,874.19 will remain in the Net Settlement Amount, making the final amount of PAGA Penalties slightly higher than contemplated in the Agreement. (Kingsley Decl. ¶24.)

⁶ The PAGA Period means the period from August 16, 2021, to August 25, 2025. (Kingsley Decl. ¶26, Exhibit 1, ¶1.23)

1 To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation
2 and discount taken follows. (Kingsley Decl. ¶28.) Plaintiff believed that Defendant may
3 persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce
4 or altogether waive any penalties under PAGA. (Kingsley Decl. ¶29.) Pursuant to Labor Code
5 §226.3, the Labor Commissioner has the discretion to “decide not to penalize an employer for a
6 first violation when that violation was due to a clerical error or inadvertent mistake.” (Kingsley
7 Decl. ¶30.) And in accordance with PAGA, the court in a PAGA action has the same discretion
8 “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion
9 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based
10 on the facts and circumstances of the particular case, to do otherwise would result in an award that
11 is unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)).
12 (Kingsley Decl. ¶31.)

13 PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a potentially
14 persuasive argument that: (1) the PAGA Employees were properly paid and/or reimbursed in
15 accordance with Defendant’s lawful policies and practices, and that any alleged failure to compensate
16 the PAGA Employees was the result of inadvertence and clerical error; (2) the PAGA Employees
17 were provided with the opportunity to take meal and rest breaks in compliance with California law;
18 (3) until this Action was filed, no employees had complaints about any alleged failure to pay wages,
19 provide meal and/or rest breaks, reimburse expenses, issue accurate itemized wage statements; (4)
20 none of Defendant’s employees suffered any harm from or actual damage as a result of the conduct
21 that forms the basis for Plaintiffs’ allegations. (Kingsley Decl. ¶32.) All of which, Counsel for
22 Defendant would argue, should mitigate in factor of significantly reducing or waiving any PAGA
23 penalties. (*Id.*) While Plaintiffs disagree that this analysis is legal correct or persuasive, PAGA
24 Counsel had to consider the foregoing facts and arguments and how they might impact any judgment
25 ultimately awarded to PAGA Employees if the Court were persuaded by them. (Kingsley Decl. ¶33.)

26 H. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
27 Plaintiffs Believe this Settlement is Fair and Reasonable.

28 **1. The Risks Associated with the Wages/Overtime Claim**

1 “California employees are entitled to compensation for all hours worked, which means “the
2 time during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so.” (Title 8 Cal. Code
4 of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified
5 on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is “*subject to the control*
6 *of an employer*” even if not working, or if an employee “*is suffered or permitted to work*” even if
7 not “under the employer’s control, provided the employer has or should have knowledge of the
8 employee’s work.” (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13,
9 2020) (citations omitted.) An employer controls an employee if the employer directs an employee
10 and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts
11 may consider include whether the activity is required, “the location of the activity, the degree of
12 the employer’s control, whether the activity primarily benefits the employee or employer, and
13 whether the activity is enforced through disciplinary measures.” (*Id.* at p. 1056; *Cf. Gibbs v. TWC*
14 *Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9).

15 Plaintiffs allege Defendant had a consistent policy of failing to compensate Plaintiffs and
16 the PAGA Employees for all hours worked. (Kingsley Decl. ¶34.) Plaintiffs specifically allege that
17 Defendant placed significant restrictions on them and other PAGA Employees while off the clock,
18 essentially requiring them to always be on call, by restricting travel and barring activities that
19 would make the employee unreachable. (Kingsley Decl. ¶35.) Plaintiffs allege that they were
20 required to be available by personal cell phone at all times. (Kingsley Decl. ¶36.) For Plaintiff
21 Mena, as an on-site property manager, the phone number posted on the office door while it was
22 closed was forwarded to her personal cell phone. (Kingsley Decl. ¶37.) For Plaintiffs Zamora and
23 Perez, who were maintenance technicians, were required to respond to maintenance calls and
24 emergency while they were off the clock – and thus were essentially on-call. (Kingsley Decl. ¶38.)
25 This time spent on-call constitutes “hours worked” under California law, but Defendant has not
26 compensated Plaintiffs and the PAGA Employees for this time. (Kingsley Decl. ¶39.)

27 By their policy of requiring Plaintiffs and the PAGA Employees to work without being
28 paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a

1 workday and/or forty (40) hours in a workweek without compensating them at the rate of one- half
2 (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510,
3 1194, 1194.2, and 1199, as well as its own written policies. Defendant therefore owes penalties
4 under PAGA. Defendant disputes this off the clock time and argues that all employees were paid
5 for all hours worked.

6 However, at trial, Defendant would argue that Plaintiff or all PAGA Employees were
7 properly compensated for all hours worked. (Kingsley Decl. ¶40.) Defendant would also argue that
8 any alleged uncompensated time was not compensable under governing law, including where such
9 time was de minimis, not authorized, or not required. (Kingsley Decl. ¶41.) At mediation,
10 Defendant strongly argued against any alleged controlling of on-call time and maintains that it did
11 not restrict travel or bar activities that would make the employee unreachable, asserting instead
12 that all hours worked were accurately captured and paid. (Kingsley Decl. ¶42.) Defendant also
13 argued that employees were not restricted during their time off- the-clock, and thus were not on-
14 call. (Kingsley Decl. ¶43.) Finally, Defendant asserts that it acted in good faith and in reasonable
15 reliance on applicable statutes, regulations, and administrative guidance in establishing and
16 implementing its compensation practices. (Kingsley Decl. ¶44.)

17 While Plaintiff disagrees that Defendant's position is factually incorrect nor legally
18 persuasive, Plaintiff nonetheless acknowledges that there is a significant risk should this claim
19 proceed to trial.

20 **2. The Risks Associated with the Meal Period Claim**

21 Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall
22 employ any person for a work period of more than five hours without providing a meal period of
23 not less than thirty minutes.

24 Labor Code § 512 provides:

25 An employer may not employ an employee for a work period of more than
26 five hours per day without providing the employee with a meal period of
27 not less than 30 minutes An employer may not employ an employee
28 for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes, except that
if the total hours worked is no more than 12 hours, the second meal period
may be waived by mutual consent of the employer and the employee only
if the first meal period was not waived.

1 Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in
2 which they are relieved of any duty or employer control and are free to come and go as they
3 please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
4 period to qualify as a lawful break under California law, an employer must (1) relieve its
5 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
6 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
7 doing so. (*Id.* at p. 1040.)

8 Plaintiffs allege that Defendant failed to apprise Plaintiffs and the PAGA Employees of
9 their rights associated with meal periods and failed to provide timely meal periods. (Kingsley Decl.
10 ¶45.) Specifically, Plaintiffs allege that Defendant has had a consistent policy of: (1) requiring
11 Plaintiffs and the PAGA Employees to take late meal breaks that occurred after the first five hours
12 of each shift; and (2) failed to pay such employees one (1) hour of pay at the employees’ regular
13 rate of compensation for each workday that the first meal period was not provided within the first
14 (5) hours of the shift or that a second meal period was not provided. (Kingsley Decl. ¶46.) Upon
15 review of the data produced for mediation, Plaintiffs found meal violations in the time records of
16 which no meal premiums were paid. (Kingsley Decl. ¶47.)

17 However, Defendant strongly argued that the employees did receive their meal periods and
18 are willing to present evidence that other employees would testify to that fact. (Kingsley Decl.
19 ¶48.) Defendant pointed out that any meal premiums owed were few and de minimis. (Kingsley
20 Decl. ¶49.) Defendant further argued that employees were relieved of all duty during meal periods
21 and were free to take uninterrupted breaks, and that any alleged missed, late, or shortened meal
22 periods were the result of individual employee choice or circumstances beyond Defendant’s
23 control, not any company policy or practice. (Kingsley Decl. ¶50.) Defendant also maintains that
24 it paid all required meal period premiums where owed and acted in good faith and in compliance
25 with governing wage and hour requirements. (Kingsley Decl. ¶51.) Additionally, Defendant
26 maintained valid meal and rest period policies. (Kingsley Decl. ¶52.) This presented a risk on the
27 meal period claim that Plaintiffs considered when evaluating this settlement. (Kingsley Decl. ¶53.)
28 While Plaintiffs believes they would be able to prevail at trial, Plaintiff nonetheless acknowledges

1 what testimony and declarations from other employees may later reveal.

2 **3. The Risks Associated with the Rest Period Claim**

3 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
4 of compensation for each workday the employer fails to provide a rest period according to law.
5 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
6 major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).)

7 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
8 or major fraction thereof, of work for its employees. If an employer does not, then the employer
9 must pay the employee one hour of pay at the employee's regular rate of pay for each workday
10 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).)

11 Here, Plaintiffs allege that Defendant failed to maintain a lawful procedure of providing
12 rest breaks to them and the PAGA Employees. (Kingsley Decl. ¶54.) Defendant failed to provide
13 Plaintiffs and the PAGA Employees with rest breaks of not less than ten (10) minutes per four (4)
14 hour work period, or major fraction thereof. (Kingsley Decl. ¶55.) Defendant also maintained an
15 unlawful policy of requiring Plaintiffs and the PAGA Employees to remain on the premises during
16 rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an
17 employer that limits where an employee can take a break does not "relinquish control over how
18 employees spend their time"). (Kingsley Decl. ¶56.) For example, Plaintiff Mena was not
19 permitted to leave the premises during her rest periods as instructed by her regional managers.
20 (Kingsley Decl. ¶57.) As such, Defendant failed to provide Plaintiffs and the PAGA employees
21 with compliant rest periods. (Kingsley Decl. ¶58.) Further, Plaintiffs and the PAGA Employees
22 were not compensated with one (1) hour of wages for each compliant rest period as required by
23 Labor Code § 226.7. (Kingsley Decl. ¶59.)

24 Defendant again raised the defense that employees received their rest breaks and presented
25 evidence that employees would testify as such. (Kingsley Decl. ¶60.) Given that the rest period
26 policy was accurate and valid, Plaintiff considered this a viable risk. (Kingsley Decl. ¶61.) In its
27 defense at trial, Defendant would have argued that Plaintiff's rest period claim was going to be
28 difficult to prove at trial because California law does not require employees to record rest periods.

(Kingsley Decl. ¶62.) Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken; and (2) if not, why not. (*Id.*) For each instance where an employee did not take a 10- minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. (*Id.*) Accordingly, Defendant would have argued that rest break claims are inherently individualized in nature because employers only need to “authorize and permit” breaks; they need not ensure that rest breaks are taken. (*Brinker*, 53 Cal. 4th at 1004.) To succeed, “[a]n employee must show that the employer prevented the employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient.” As such, Plaintiffs had to acknowledge that it could potentially be easy for Defendant to defeat this claim if it was able to gather testimonial evidence from other PAGA Employees indicating that they were able to take all required rest breaks each day. (*Id.*) Though Plaintiffs do not believe this was the case based on their own testimonies and experiences, Plaintiffs must acknowledge it poses risks at trial. (*Id.*) There is certainly risk as to both sides as to what declarations and depositions of class members might reveal. (*Id.*)

4. The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties” (Lab. Code, § 2802, subd. (a).)

On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and the PAGA Employees the cost of using their personal cell phones, tools and supplies for business related purposes. (Kingsley Decl. ¶63.) Specifically, Defendant required Plaintiffs and the PAGA employees to be available by cell phone and answer/use their cellphones while working and the cellphones were necessary to perform their job duties. (Kingsley Decl. ¶64.) Plaintiffs and the PAGA Employees were also required to download an application on her personal cell phone to clock in and out of their scheduled working shifts. (Kingsley Decl. ¶65.) Defendant required that Plaintiffs and the PAGA Employees purchase tools, cleaning supplies and light bulbs, and this was necessary to perform their job duties. (Kingsley Decl. ¶66.) These cell phones, tools, cleaning

1 supplies and light bulbs were not provided by Defendant, and Defendant failed to reimburse
2 Plaintiffs and the PAGA Employees for the costs associated with using these personal cell phones,
3 tools and supplies. (Kingsley Decl. ¶67.)

4 Here, Defendant would argue that any alleged cell phone usage attributed to work was
5 minimal and therefore would limit any recovery. (Kingsley Decl. ¶68.) Even assuming liability,
6 any damages would be subject to a proportional “violation rate” analysis, which would
7 substantially reduce the amount of recoverable expenses given that the vast majority of usage was
8 non-compensable or unrelated to work. (Kingsley Decl. ¶69.) Defendant also maintains that all
9 tools and necessary items for work were provided and any subsequent purchases made by
10 employees were discretionary and optional, which would fall outside the scope of reimbursable
11 business expenses. (Kingsley Decl. ¶70.) This would mean that at trial the recoverable damages
12 could potentially be relatively small. (Kingsley Decl. ¶71.)

13 **5. The Risks Associated with the Wage Statement Claims**

14 California Labor Code §226(a) requires Defendant to provide its employees with an
15 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
16 employee, their name and address of the legal entity that is the employer, and all applicable hourly
17 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
18 employers to furnish accurate itemized wage statements in writing that show total hours worked
19 by the employee and all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
21 226(a)(2) and (9) respectively.)

22 Here, Defendant furnishes Plaintiffs and the PAGA Employees with itemized wage
23 statements that do not accurately show total hours worked. (Kingsley Decl. ¶72.) Defendant
24 furnishes Plaintiffs and the PAGA Employees with itemized wage statements that do not
25 accurately show all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate because Plaintiffs and the PAGA Employees
27 performed work while off the clock. (Kingsley Decl. ¶73.) The work performed off the clock was
28

not recorded and thus was not reflected in the PAGA Employees' wages and wage statements. (*Id.*)

Further, Plaintiffs and the PAGA Employees are issued wage statements that do not include accurate meal and rest premiums as a result of the claims alleged above. (Kingsley Decl. ¶74.) Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis. Wage statement penalties are "fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000)." Labor Code § 226(e)(1). Thus, Defendant owes the PAGA Employees penalties under PAGA for failing to provide accurate and itemized wage statements.

Due to the risk that derivative liability under Labor Code § 226(a) would not attach, Defendant maintains that, even assuming any underlying violation, Plaintiff cannot establish that any wage statement violation was "knowing and intentional," as required under *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056 and *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308. In particular, Defendant contends that any alleged deficiencies were the result of a good faith dispute or reasonable interpretation of applicable law, which precludes the imposition of wage statement penalties.

6. The Risks Associated with the Waiting Time Penalties Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiffs and numerous PAGA Employees are no longer employed by Defendant. Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Kingsley Decl. ¶75.) Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163

Cal.App.4th 1157, 1201.) “The failure to pay is willful if the employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does not also require proof that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

Plaintiffs factored in the risk of establishing that any violation was “willful” and the fact that this claim is derivative. (Kingsley Decl. ¶76.)

In light of all these significant risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement Amount of \$210,000.00 was fair and reasonable. (Kingsley Decl. ¶77, Exhibit 1, ¶3.1.)

D. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code

“PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp.* No. 2 163 Cal. App 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3.

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code section 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did not show either an employee identification number or the last four digits of the social security number of the employee; (b) the statements did not show the beginning date of the pay period for which the employee was paid; (c) the statements identified Covidien as the employee’s employer. (*Id.* At *2). There were approximately 28,000 wage statements at issue. (*Id.* at *3). The *Fleming* court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage

statement). (*Ibid*; *see also* Labor Code § 2699(f)(2)). After a bench trial, the Court elected to exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements, reflecting 18% of the potential exposure. (*Id.* at *4). The Court reasoned:

Here, the aggrieved employees suffered no injury due to the erroneous wage statements, and made no complaint of the errors or omissions contained therein prior to filing suit. Also, Defendants were not aware that the wage statements violated the law and took prompt steps to correct all violations once notified. Given these circumstances, the Court finds a \$2.8 million penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the Court reduces the penalty to \$500,000.

(*Id.* at *4.) A court exercising its discretion to significantly reduce the civil penalty awarded under PAGA is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbucks’ “good faith attempts” to comply and because the violations were minimal).

Here, as explained above, Plaintiffs’ counsel anticipated that, at trial, Counsel for Defendant would argue that: (1) the PAGA Employees were properly paid and/or reimbursed in accordance with Defendant’s lawful policies and practices, and that any alleged failure to compensate the PAGA Employees was the result of inadvertence and clerical error; (2) the PAGA Employees were provided with the opportunity to take meal and rest breaks in compliance with California law; (3) until this Action was filed, no employees had compliance about any alleged failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue accurate itemized wage statements; (4) none of Defendant’s employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiffs’ allegations. All of which, Counsel for Defendant would argue, should mitigate in favor of significantly reducing the civil penalty.

After engaging in pertinent informal discovery in this Action, Plaintiffs’ counsel determined that a settlement of \$210,000.00 is reasonable given the above risks.

E. There is a Strong Risk the Higher \$200 Civil Penalty Triggered for “Subsequent” Violations Will Not Apply

Plaintiffs believe there is a strong risk that the Court will not award the \$200 civil penalty triggered for “subsequent” violations. (Lab. Code § 2699(f)(2).) If this case were to proceed to

trial, Plaintiffs would argue that a “subsequent” violation simply means that Defendant violated sections 201-203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, more than once for a given employee. Plaintiffs are not aware of any case law that interprets “subsequent” in the context of section 2699. However, Defendant is likely to rely on *Amaral*, which rejected a purely temporal understanding of the term “subsequent” and interpreted its use in Labor Code sections 210 and 225.5 to require that “the employer has been notified that it is violating a Labor Code provision” before higher penalties are triggered. (*Amaral, supra*, 163 Cal.App.4th at 1209; *see also Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144.) Defendant presumably will take the position that it has not been notified that it actually violated a Wage Order until the Labor Commissioner issues a formal citation or the Court makes a finding that a violation existed.

I. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
Plaintiff Believes this Settlement is Fair and Reasonable

Plaintiffs retained an expert to analyze Defendant’s data ahead of mediation. Plaintiffs assessed the value of the Unpaid Wages claim at approximately \$271,300. (Kingsley Decl. ¶78.) Plaintiffs’ expert calculated that 2,713 pay periods showed underpayment of wages, or 25.1% of PAGA pay periods. (Kingsley Decl. ¶79.) However, Plaintiff believes a discount on this claim was appropriate due to the risks discussed above.

Plaintiffs valued the Meal Period claim at approximately \$528,800. (Kingsley Decl. ¶80.) This assumes one meal premium is owed every other workweek, using 5,288 out of 10,789 applicable workweeks based on Plaintiffs’ expert review of the data. (Kingsley Decl. ¶81.) Plaintiffs’ expert’s review of the time records shows only one meal premium due in approximately half of the pay periods at issue, which Plaintiff alleges is due to Defendant’s procedure of avoiding meal premiums by having employees clock out and continue working. (Kingsley Decl. ¶82.) However, for the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶83.)

Plaintiff assessed the maximum value for the Rest Period claim at approximately \$1,057,000. (Kingsley Decl. ¶84.) Since this amount assumed one rest premium is owed per pay period and Plaintiff’s expert assumed a violation rate of 98% across all pay periods, Plaintiffs

1 determined that accepting a discount of the full amount was appropriate based on the reasons
2 explained above. (Kingsley Decl. ¶85.)

3 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
4 to assume that reimbursements for personal cell phone use would have occurred once per month,
5 or one pay period per month. (Kingsley Decl. ¶86.) Plaintiff also acknowledges that PAGA
6 Employees may not have used their personal cell phones for each and every pay period, and that
7 any business use of their personal cell phones were likely de minimis. As such, the maximum value
8 for this claim would be \$528,800, but a court would likely reduce this penalty significantly.
9 (Kingsley Decl. ¶87.)

10 Plaintiff valued the Wage Statement Claim, without discount, at \$1,057,000. (Kingsley
11 Decl. ¶88.) Plaintiff assumes a maximum penalty of \$4,000 under Labor Code 226(a) for
12 approximately 10,789 workweeks. (Kingsley Decl. ¶89.) This figure is overstated because Labor
13 Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage
14 statement penalties per employee. (Kingsley Decl. ¶90.) Plaintiff determined that a steep discount
15 of this claim was fair for settling purposes. (Kingsley Decl. ¶91.)

16 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$11,400
17 based on 114 former employees. (Kingsley Decl. ¶92.) In light of the derivative nature of §203
18 penalties, the dispute over whether any wages were owed, and Defendant's position regarding the
19 absence of separated employees, Plaintiff determined that accepting a discount on this claim was
20 appropriate. (Kingsley Decl. ¶93.)

21 On the other hand, based on the number of pay periods at issue, a court can assess that
22 maximum potential exposure for the PAGA claims for the PAGA Employees is \$1,078,900
23 (\$10,789 pay periods at issue multiplied by \$100 a pay period) and then reduce the penalties
24 awarded from there. If the Court stacks penalties per Labor Code violation, as Plaintiffs have done
25 above by assessing a separate penalty for each claim, the full value could balloon up to over
26 \$3,400,000.00.

27 However, in light of the immense discretion available, Plaintiffs believes the Settlement is
28 reasonable. Moreover, Plaintiffs were able to obtain close to 20% of the maximum value for this

case. This settlement represents approximately \$19.46 per PAGA pay period (\$210,000 / 10,789 pay periods) which is in line with what other courts have awarded at trial. (*See e.g., Carrington, supra*, 30 Cal.App.5th at 529.)

Given the risks and that this Settlement is for \$210,000.00, Plaintiffs believe this is a very fair and reasonable settlement.

X. THE REQUEST FOR ATTORNEYS' FEES AND COSTS

As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross Settlement Amount of \$210,000.00. (Kingsley Decl. ¶98; Ex. 1 at ¶¶3.1.) From that fund, Plaintiffs request an award of attorneys' fees for PAGA Counsel in the amount of \$69,972.00, or 33.33% of the Gross Settlement Amount, and \$18,125.81 in reimbursement for litigation costs. (*Id.* Ex. 1 at ¶3.2.2.)

F. Plaintiffs' Counsel are Entitled to a Fee from the Common Fund

On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International*, which addressed the correct methodology for awarding fees in a class action settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte* Court approved awarding fees as a percentage of the settlement fund in cases like the present one, where a settlement results in the creation of a common fund on behalf of a class:

We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Class Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

(*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is preferred over the alternative lodestar-multiplier approach in California courts:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Id.* at 573.)

1 An award of 33.33% of the common fund is appropriate here under the “substantial benefit”
2 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
3 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
4 representative capacity to recover fees when the litigant’s efforts have created a substantial, actual,
5 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
6 subject matter makes possible an award which spreads the cost proportionately among the
7 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
8 563, 578.)

9 This doctrine rests on the understanding that attorneys should normally be paid by their
10 clients, and that unless attorneys’ fees are paid out of the common fund, those who benefitted from
11 the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
12 23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
13 this unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against
14 the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*
15 *III*, 20 Cal.3d at p. 35.) “A court, in the exercise of its equitable discretion, may decree that those
16 receiving the benefit should contribute to the costs of its production.” (*Save El Toro Assn., supra*,
17 98 Cal.App.3d at 548.) As this approach “better approximates the workings of the marketplace
18 than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee award as a
19 percentage of the recovery” in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82
20 Cal.App.4th 19, 31, 48.)

21 G. The Attorneys’ Fees Request Are Well Within the Range of Fees in Comparable
22 Cases

23 Courts historically award fees in the twenty-to-fifty percent range, depending on the
24 circumstances of the case. As stated in Newberg:

25 No general rule can be articulated on what is a reasonable percentage
26 of a common fund. Usually 50% of the fund is the upper limit on a
27 reasonable fee award from a common fund in order to assure that
28 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; and see *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn 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.”].) Thus, PAGA Counsel’s requested fee of 33.33% is not only well within the range of reasonableness, but lower than the average fee award of 35% and is fair compensation for undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

H. PAGA Counsel’s Fee Request is Reasonable Under a Lodestar Crosscheck

Courts may “cross-check” the results of the common fund method against the lodestar method. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977) (“*Serrano III*”).) Those rates reflect “the general local hourly rate for a fee-bearing case” and do “not include any compensation for contingent risk, extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254; *Serrano III, supra*, 20 Cal.3d at 49.)

i. Requested Multiplier

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace. Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an enhancement is often awarded so that the fee received is commensurate with what attorneys could expect to be compensated for services in similar circumstances. (See *Tulare Valley Audubon Soc., Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough “to entice competent counsel to undertake difficult public interest cases”].) No specific findings reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th at 254; *Rebney, supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney fees were awarded according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Kingsley Decl. ¶107.) PAGA Counsel have an aggregate lodestar in the amount of \$50,622.00 which represents 52.50 hours of attorney work on this litigation from its inception through the date

of this filing of Plaintiffs' instant Motion, and ten (10) future hours for both Eric B. Kingsley and Sydney I. Baines. (*Id.*) As such, PAGA Counsel is asking for a lodestar multiplier of 1.38. (Kingsley Decl. ¶108.) Typically, the lodestar is merely the starting point of the calculation of a reasonable fee, and courts often multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the issues involved. (*See Radar v. Thrasher*, (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank*, (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors*, (1997) 76 Cal.App.3d 241, 251.)

This case dealt with difficult legal and factual questions. (Kingsley Decl. ¶109.) Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses as discussed in detail above. (*Ibid.*) Were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. (*Ibid.*) There are genuine issues in dispute. (*Ibid.*) Furthermore, PAGA Counsel was able to obtain close to the full value for this case. (Kingsley Decl. ¶110.)

As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter. (Kingsley Decl. ¶111.) To achieve the ultimate result in this case, my firm had to incur substantial risk and expense, and were precluded from taking other fee generating employment for 72.50 hours of attorney time. (Kingsley Decl. ¶112.) This matter had been handled purely on a contingency fee basis and my firm has advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter. (Kingsley Decl. ¶113.) PAGA Counsel believe this is an exceptional result that has been well received by the PAGA Employees. (Kingsley Decl. ¶114.)

XI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this

1 litigation, in the amount of \$18,125.81. (Kingsley Decl. ¶138.) To date, PAGA Counsel has
2 incurred \$17,925.81 in costs. (Kingsley Decl. ¶139.) PAGA Counsel anticipates incurring an
3 additional \$200.00 in costs to file and serve this motion, but the Settlement provides for a
4 reimbursement of litigation costs of up to \$21,000.00. (Kingsley Decl. ¶140.) As such, counsel is
5 requesting a cost reimbursement of \$18,125.81. (Kingsley Decl. ¶141.)

6 All of the requested costs are reasonable in amount and were necessarily incurred by PAGA
7 Counsel in prosecuting this litigation. (Kingsley Decl. ¶142.); Exhibit 5 [Cost Report].) Expenses
8 in this matter to date include costs for filing fees, research, mediation, and additional costs for the
9 prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Eric B.
10 Kingsley. All of these costs have been incurred in the course of this litigation, and all costs
11 advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of
12 filing the present motion. (Kingsley Decl. ¶143.)

13 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
14 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
15 should approve the request for reimbursement in the amount of \$18,125.81. (Kingsley Decl. ¶144.)

16 **XII. ENHANCEMENT TO PLAINTIFFS**

17 The Settlement calls for an enhancement payment of \$5,000.00 each to the named Plaintiffs
18 (\$15,000 total), to be paid from the Gross Settlement Amount. (Kingsley Decl. ¶145; Ex. 1 at
19 ¶3.2.1.) Incentive awards “are intended to compensate class representatives for work done on
20 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
21 and sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez v.*
22 *West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that named
23 plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or
24 risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI*
25 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American*
26 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th
27 Cir.2003) 327 F.3d 938, 977)).

28 Here, the enhancement takes into consideration the time, effort, and expense incurred by

1 Plaintiffs in coming forward to litigate this matter on behalf of the PAGA Employees. The time
2 spent by Plaintiffs includes identifying competent counsel, providing information to PAGA
3 Counsel regarding Plaintiffs' relevant employment experiences, compiling documents, meeting
4 with PAGA Counsel frequently to discuss the status of the case and the theories of liability,
5 reviewing settlement documents, and making themselves available for a full day of mediation.
6 (Kingsley Decl. ¶146; Declarations of Raul E. Zamora, Mandy C. Mena, and Antonio Perez.)

7 PAGA Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl.
8 ¶147.) The enhancement takes into consideration the time, effort, risks, and expense incurred by
9 Plaintiffs in coming forward to litigate this matter on behalf of the PAGA Employees. (Kingsley
10 Decl. ¶148.) Accordingly, Plaintiffs should be awarded the agreed-upon enhancement of \$5,000.00
11 each, or \$15,000.00 total.

12 **XIII. CONCLUSION**

13 Plaintiffs and Plaintiffs' Counsel submit that the proposed Settlement as documented in the
14 Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State of
15 California. Plaintiffs respectfully request that the Court approve the Settlement and Order that the
16 Settlement is carried out according to the terms of the Agreement.

17
18 DATED: July 1, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

19
20
21 By: 

22 Eric B. Kingsley
23 Jessi Bulaon
24 Attorneys for Plaintiffs and all aggrieved employees
25
26
27
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 2, 2026, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FISHER & PHILLIPS LLP
Kyley Murer
kmurer@fisherphillips.com
Lauren Godshall
lgodshall@fisherphillips.com
Colin Calvert
ccalvert@fisherphillips.com
Mitzi Ortiz
mortiz@fisherphillips.com
Stephanie Crisp
scrisp@fisherphillips.com
2050 Main Street, Suite 1000
Irvine, CA 92614

EMIL DAVTYAN, Esq. (SBN-299363)
emil@d.law
D.LAW, INC.
250 N. Madison Ave.
Pasadena, CA 91101

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 2, 2026, at West Hollywood, California.

Taylor Gregg



Make a Reservation

RAUL E. ZAMORA, et al. vs ABODE COMMUNITIES

Case Number: 23STCV28338 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-11-20 Location: Stanley Mosk Courthouse - Department 224

Reservation

Case Name: RAUL E. ZAMORA, et al. vs ABODE COMMUNITIES	Case Number: 23STCV28338
Type: Motion re: (Motion for Approval of Representative Action Settlement)	Status: RESERVED
Filing Party: Raul E. Zamora (Plaintiff)	Location: Stanley Mosk Courthouse - Department 224
Date/Time: 08/21/2026 9:00 AM	Number of Motions: 1
Reservation ID: 110594763679	Confirmation Code: CR-NC8A8OXQYJDC4ZLKF

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

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