JUSTICE FOR WORKERS, P.C.
William C. Sung SB# 280792
E-Mail: william@justiceforworkers.com
Tiffany L. Luu SB# 335127
E-Mail: tluu@justiceforworkers.com
Joseph C. Ramli SB# 339491
E-Mail: jramli@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff FELIPE HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

FELIPE HERNANDEZ, an aggrieved employee and on behalf of other aggrieved employees;

Plaintiff,

vs.

VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation; and DOES 1 through 50,

Defendants.

Case No.: S-CV-0051588

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ATTORNEY'S FEES AND COSTS

(Filed Concurrently with Supporting Declarations and [Proposed] Judgment and Order)

JUDGE: Hon. Christine Dehr
DATE: August 21, 2026
TIME: 8:25 a.m.
DEPT: 1

Action Filed: November 6, 2023
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on August 21, 2026, at 8:25 a.m. in Department 1 of the Superior Court of the State of California for the County of Placer, located at 101 Maple Street, Auburn, California, Plaintiff Felipe Hernandez ("Plaintiff") will move the Court, pursuant to California Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, *et seq.,* for an Order:

1. Approving the settlement of this PAGA representative action in the form agreed to by Plaintiff and Defendant Volkswagen Group of America, Inc. ("Defendant") (together with Plaintiff, the "Parties") in the PAGA Settlement Agreement (the "Settlement" or "Agreement");

2. Appointing Plaintiff's counsel as PAGA counsel, for settlement purposes only, and approving an award to Plaintiff's counsel for reasonable attorney's fees in the amount of $40,000.00 (33 1/3% of the Gross Settlement Amount) and reasonable costs in the amount of $16,662.50;

3. Appointing Apex Class Action LLC as the Settlement Administrator, and approving payment of Settlement Administrator's costs in the amount of $4,425.00;

4. Approving the release of PAGA claims by Plaintiff on behalf of Aggrieved Employees and the State of California;

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

6. Entering final Judgment; and

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

This Motion will be based upon this notice, the attached Memorandum of Points and Authorities, Declarations of William C. Sung, Felipe Hernandez, and Kimberly Sutherland of Apex Class Action LLC, and exhibits thereto that were filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

/ / /

DATED: July 16, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Attorneys for Plaintiff FELIPE HERNANDEZ

TABLE OF CONTENTS

I. INTRODUCTION 1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT 2
A. PLAINTIFF'S CLAIMS AND PROCEDURAL BACKGROUND 2
B. DISCOVERY AND INVESTIGATION 2
C. SETTLEMENT NEGOTIATIONS 3
D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT 3
III. DISCUSSION 5
A. AVAILABILITY OF CIVIL PENALTIES 5
B. THE SETTLEMENT WARRANTS APPROVAL 6
1. The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public 6
C. THE REQUESTED ATTORNEYS' FEES AND COST AWARD SHOULD BE APPROVED 9
1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method 9
2. The Requested Fee is in Line with Typical Cases 10
3. The Matter Involves a Fee and Cost Shifting Provision under PAGA 11
4. The Experience, Reputation, and Ability of Plaintiff's counsel Support the Requested Fee Award 12
5. While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees 12
6. Plaintiff's Counsels' Costs Are Reasonable and Actually Incurred 15
D. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES 15
E. PROOF OF SERVICE OF SETTLEMENT AND ALL MOVING PAPERS ON THE LWDA 16
IV. CONCLUSION 16

TABLE OF AUTHORITIES

STATE CASES

Brinker Rest. Corp. v. Superior Court (2012) 53 Cal.4th 1004 7

Caliber Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 365 5

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, ... 9

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 11

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105 10

Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors (1977) 76 Cal.App.3d 241 13

Consumer Privacy Cases (2009) 175 Cal.App.4th 545 13

D'Amico v. Bd. of Medical Examiners (1974) 11 Cal.3d 1 10

Dunlap v. Superior Court (2006) 142 Cal.App.4th 330 5

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 13

Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19 ..... 12, 13

Quinn v. State of California (1995) 15 Cal.3d 162 10

Serrano v. Priest (1977) 20 Cal.3d 25 ..... 9, 10

Thurman v. Bayshore Transit Mgmt., Inc. (2012) 203 Cal.App.4th 1112 9

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 13

FEDERAL CASES

Court Awarded Attorney Fees (1985) 108 F.R.D. 237 13

Fleming v. Covidien Inc. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 9

Hermosillo v. Davey Tree Surgery Co. (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697 14

In re Bluetooth Headset Prods. Liab. Litig. (9th Cir. 2011) 654 F.3d 935, 942 14

Staton v. Boeing Co. (9th Cir. 2003) 327 F.3d 938 15

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294 11

Villalobos v. Calandri Sonrise Farm LP (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709 ..... 1, 9

Vincent v. Hughes Air W., Inc. (9th Cir. 1977) 557 F.2d 759 10

STATUTES

Lab. Code § 226(a) 8
Lab. Code § 2699.3(a) 5
Lab. Code § 2699(g)(1) 11, 15
Lab. Code § 2699(l)(2) 1, 5, 6

TREATISES

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03 11

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Felipe Hernandez ("Plaintiff") seeks approval of a proposed representative action settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, *et seq.* ("PAGA") against Defendant Volkswagen Group of America, Inc. ("Defendant") (together with Plaintiff, the "Parties"). After a full day of mediation with experienced neutral mediator Brandon McKelvy, Esq., the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement (the "Settlement" or "Agreement")[1].

The Settlement calls for a Gross Settlement Amount of **$120,000.00**. After deducting Plaintiff's counsel's reasonable attorney's fees and costs awards, payment for the Settlement Administrator's cost, and required payment to the California Labor and Workforce Development Agency (the "LWDA"), approximately **$14,728.13** will be paid to approximately **130** Aggrieved Employees. The average approximate share of the settlement paid to Aggrieved Employees is **$113.29**. Pursuant to Labor Code § 2699(l)(2)[2], Plaintiff now file this unopposed motion, seeking an order approving the proposed Settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(l)(2).) In deciding whether to grant approval of a proposed settlement, the primary issues to be decided is whether the settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient

---

[1] A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung ("Sung Decl."). The proposed explanatory letter regarding PAGA settlement is attached to the Agreement as **Exhibit A** to the Agreement. All defined terms in this Motion have the same definition as that in the Agreement.

[2] This Action and Settlement are subject to pre-PAGA reform, July 1, 2024 PAGA requirements. All citations to Labor Code §§ 2698, *et seq.* are to the pre-July 1, 2024 PAGA statute.

investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. PLAINTIFF'S CLAIMS AND PROCEDURAL BACKGROUND

Defendant is the North American operational headquarters for Volkswagen and operates various facilities in California, including parts distribution centers, research and technical centers, and corporate offices. (Sung Decl., ¶ 9.) Defendant employed Plaintiff as an hourly-paid, non-exempt warehouse technician at its parts distribution center in Rocklin, California from approximately 2018 to approximately July 24, 2023. (Declaration of Felipe Hernandez, ¶ 2.)

On September 1, 2023, Plaintiff submitted the PAGA notice of alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the "LWDA"). (Sung Decl., ¶ 10, **Exh. 2** – PAGA Notice.) Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. (*Id.*) On November 6, 2023, Plaintiff filed the Representative Action Complaint alleging a single cause of action for Civil Penalties Under the California Private Attorneys General Act ("PAGA"). (Sung Decl., ¶ 11, **Exh. 3** – Complaint.) On January 9, 2024, the Court granted the Parties' stipulation to submit Plaintiff's individual claims to arbitration and stay PAGA representative claims. (Sung Decl., ¶ 12.) On May 2, 2024, Plaintiff filed a Demand for Arbitration with JAMS. (Sung Decl., ¶ 13.) During the course of the arbitration proceedings, the Parties agreed to mediate on a PAGA representative basis. (*Id.*)

B. DISCOVERY AND INVESTIGATION

Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. (Sung Decl., ¶ 14.) Specifically, Defendant produced (1) a PAGA list with Aggrieved Employees' unique identifying number, job title, location worked, and dates of employment; (2) a 25% sampling of employee time and payroll records; (3) Defendant's standalone policies and procedures; and (4) Plaintiff's personnel records and wage statements. (*Id.*)

Plaintiff's counsel, with the assistance of a retained expert data analyst, analyzed and reviewed the documents regarding Defendant's wage and hour policies and practices, the Aggrieved

Employees' time and pay records, and other information provided by Defendant and Plaintiff. (Sung Decl., ¶ 15.) Plaintiff's counsel was able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure and prepare a damage analysis prior to mediation. (*Id.*) The time and pay records of all Aggrieved Employees allowed Plaintiff's counsel and their expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and Plaintiff's counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. SETTLEMENT NEGOTIATIONS

On January 22, 2026, the Parties participated in private mediation before Brandon McKelvy, Esq., an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a tentative PAGA settlement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and Plaintiff's counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*)

D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT

The Settlement covers all current and former non-exempt employees who worked for Defendant within the State of California during the period from September 1, 2022 through March 24, 2026. ("Aggrieved Employees"). (Agreement, § 2.) The PAGA Period is from of September 1, 2022 through March 24, 2026. (Agreement, § 9.) The Gross Settlement Amount of the Settlement is $120,000.00. (Agreement, § 4.) The Settlement provides that Plaintiff's counsel may seek an award of reasonable attorney's fees of up to one-third of the Gross Settlement Amount which is $40,000.00, and up to $20,000.00 in litigation costs. (Agreement, § 13.) Plaintiff's litigation costs are approximately $16,662.50, including estimated future costs in filing this Motion and supporting papers ($77.97), CourtCall appearance fee ($15.50), any supplemental filings for this Motion ($16.17), and filing of the Settlement Administrator's declaration of compliance re settlement administration ($16.17). (Sung Decl., ¶ 17; Exh. 4 – Itemized Costs.)

The Settlement Administrator will be paid administration costs not to exceed $4,425.00. (Agreement, § 14.) The Parties jointly selected Apex Class Action LLC as the neutral entity to administer this Settlement based on its bid of $4,425.00. (Sung Decl., ¶ 18; *see also* Declaration of Kimberly Sutherland ["Admin. Decl."], ¶ 7, Exh. B – Administrator Bid.)

After deducting Plaintiff's attorney's fee and cost awards and payment to the Settlement Administrator, in the amounts approved by the Court, the remainder, called the Net Settlement Amount, will be distributed as 75% to the LWDA and 25% to Aggrieved Employees. (Agreement, §§ 6, 12.) The amount estimated in the Net Settlement Amount for the LWDA payment and the Aggrieved Employee payment is **$58,912.50**. (Sung Decl., ¶ 19.) Accordingly, approximately **$14,728.13** (25% of the Net Settlement Amount) will be paid to the estimated 130 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved Employee worked during the PAGA Period, and the raw average payment to Aggrieved Employees is estimated at **$113.29**. (*Id.*; *see* Agreement, § 6.)

Defendant will fund the Gross Settlement Amount within 30 days after the Court enters a final order and judgment approving the Settlement. (Agreement, § 17.) Within 15 days after the Court enters a final order and judgment, Defendant will provide the Settlement Administrator with a PAGA list of all Aggrieved Employees, including their full name, last known mailing address, telephone number, social security number, and number of Pay Periods or dates of employment. (Agreement, § 18.)

Upon receipt of the PAGA list, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. (Agreement, § 19.) Within 15 calendar days of the Settlement being fully funded, the Settlement Administrator will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement and translated into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to

Plaintiff's counsel; and court-approval administration costs to itself. (Agreement, §§ 17, 19.)

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to the forwarding address affixed thereto. (Agreement, § 19.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address, using a skip-trace or other similar search, using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*) Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. (*Id.*)

III. **DISCUSSION**

A. AVAILABILITY OF CIVIL PENALTIES

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action "on behalf of himself or herself and other current or former employees . . ." (Lab. Code § 2699(a).) The penalties collected in these private civil actions are to be distributed 75% to the LWDA and 25% to the aggrieved employees. (*Id.* at § 2699(i).) Before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code § 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code § 2699.3, subdivision (a). (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code § 2699.3, Plaintiff provided notice to the LWDA and Defendant. (Sung Decl., ¶ 10; Exh. 2.) Plaintiff's administrative exhaustion periods expired without the LWDA indicating its intent to investigate the allegations. (*Id*.) Accordingly, Plaintiff may proceed with this PAGA representative action.

B. THE SETTLEMENT WARRANTS APPROVAL

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

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

Plaintiff's counsel has conducted a thorough investigation into the facts of this case. (Sung Decl., ¶ 20.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's counsel is of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State. (*Id.*) The Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id*) Although the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in substantial formal discovery procedures, including depositions and expert discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties, as well as the prospect of appeals in the wake of any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*)

Based on Plaintiff's counsel's analysis of the time and payroll records provided by Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendant's disclosures, there were approximately 130 Aggrieved Employees who collectively worked approximately 6,358 pay periods. (*Id.*) Plaintiff's counsel's damages valuation utilizes the initial violation rate penalty of $100 in analyzing PAGA penalties because, based on Plaintiff's counsel's investigation, Defendant has not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation penalty does not apply. (*Id*; *see Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157, 1173.) Plaintiff's counsel's valuation of each theory of liability is set forth below.

/ / /

Unlawful Rounding. Plaintiff alleged that Defendant unlawfully rounded his and Aggrieved Employees' time punches, resulting in unpaid wages. (Sung Decl., ¶ 22.) Plaintiff's expert found approximately 38.93% of pay periods had a net loss of time due to Defendant's rounding practices. (*Id.*) Based on this analysis, Plaintiff's counsel estimate Defendant's maximum exposure for civil penalties for unlawful rounding is $361,371.43. (*Id.*) In response, Defendant argues that its rounding practice was lawful since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. (*Id.*) Defendant contended that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. (*Id.; see, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028.)

Regular Rate Violations. Plaintiff alleged that Defendant failed to include all non-discretionary incentive compensation, such as Stipend VW and Stipend AU, into the regular rate of pay for overtime and paid sick leave wages. (Sung Decl., ¶ 23.) Based on Plaintiff's expert's analysis, Plaintiff's counsel estimate Defendant's maximum exposure for civil penalties for regular rate violations is $160,392.96. (*Id.*) In response, Defendant argued that these paycodes are for employee benefit of leased cars, are not dependent on hours worked or production, and therefore are gifts and need not be factored into the regular rate. (*Id.*)

Meal and Rest Period Violations. Plaintiff alleged that he was sometimes unable to take complaint meal and rest breaks. (Sung Decl., ¶ 24.) Plaintiff's expert found a 15.23% violation rate for meal periods (i.e., late, missed, or short meal periods). (*Id.*) Extrapolating the 15.23% violation rate for meal periods, and estimating the same violation rate of rest periods, Plaintiff's counsel estimate Defendant's maximum exposure for civil penalties for meal and rest period violations are $188,457.14. (*Id.*) In response, Defendant countered that it has maintained compliant meal and rest period policies and practices throughout the PAGA Period and always provided compliant meal and rest periods in line with those policies. (*Id.; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 [holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods].)

/ / /

Derivative Wage Statement and Waiting Time Violations. Plaintiff alleged that, as a result of the aforementioned wage violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage statements in violation of Labor Code § 226(a). (Sung Decl., ¶ 25.) Estimating a 50% violation rate, PAGA penalties are estimated at $309,400.00. (*Id.*) Plaintiff alleged that, as a result of the aforementioned wage violations, Defendant failed to pay all wages due to formerly employed Aggrieved employees upon their separation of employment in violation of Labor Code §§ 201 and 202. (*Id.*) At $100 per former employee for 66 former employees, PAGA penalties are estimated to be $6,600.00. (*Id.*) In response, Defendant points to its substantive defenses on regular rate, rounding, and meal/rest period claims to argue that these derivative claims will fail with the underlying claims. (*Id.*)

Claims for Which No Value Are Assigned. Plaintiff's counsel evaluated and investigated the following theories and did not assign any value. (Sung Decl., ¶ 26.) First, based on Plaintiff's counsel's review of the payroll sampling, it does not appear Defendant deducted wages from other Aggrieved Employees due to wage overpayment. (*Id.*) Second, no penalties are assigned to Labor Code §§ 204 and 1174 violations because said claim is purely derivative of underlying claims and Plaintiff assigned derivative valuation to Labor Code § 226 violations. (*Id.*) Third, no penalties are assigned to Labor Code § 212 because Plaintiff's file revealed that Plaintiff signed a voluntary direct deposit form. (*Id.*) Finally, Defendant argued that Plaintiff cannot prove an industrywide standard for its Labor Code § 1198 claim. (*Id.*)

Maximum Exposure and Realistic Recovery. Based on the foregoing, Plaintiff's counsel estimates Defendant's maximum exposure for PAGA penalties to be approximately **$1,026,221.53**, and the Gross Settlement Amount is approximately 11.69% of Defendant's maximum penalty exposure. (Sung Decl., ¶ 27.)

However, PAGA penalties are subject to discretionary reduction by this Court. (Sung Decl., ¶ 28.) Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where ". . . if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington* *v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. (*See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part because employer "not aware" of violations].) Here, Defendant argued that based on their compliant policies and practices, their defenses on Plaintiff's theories of liability on the merits, and the hypertechnical nature of the regular rate claims, the Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code. (*Id*.)

Considering Defendant's defenses on the merits and the potential for the Court to reduce a PAGA penalty award, Plaintiff's counsel believes there is an 80% risk factor that the Court will find some of the claims in Defendant's favor and/or exercise its discretion to reduce the PAGA penalty award. (Sung Decl. at ¶ 29.) Accordingly, applying an 80% discount to the maximum penalty exposure, Plaintiff's counsel believes the realistic recovery at trial on these claims to be **$ $205,244.31**. (*Id.*) The $120,000.00 settlement is a fair and equitable result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **58.47%** of Plaintiff's realistic recovery. (Sung Decl., ¶ 30; *see Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

For the reasons set forth below, Plaintiff requests that the Court approve an attorney's fee award of **$40,000.00** and cost award of **$16,662.50** to Plaintiff's counsel.

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

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

California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Plaintiff's counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

> …fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. <u>The Requested Fee is in Line with Typical Cases</u>

According to a leading treatise on class actions: "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].) Here, Plaintiff request attorneys' fees equal to 30% of the Gross Settlement Amount, which is in line with the prevailing guidelines established under California case law and in academic literature and is consistent with awards in California. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

3. <u>The Matter Involves a Fee and Cost Shifting Provision under PAGA</u>

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

This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's counsel for their decision to assume risk by taking on this matter. (Sung Decl., ¶ 30.) In fact, prosecution of this action involved significant financial risk for Plaintiff's counsel. (*Id.*) Plaintiff's counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Plaintiff's counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. (*Id.*)

/ / /

/ / /

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

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiff's counsel possess considerable expertise in litigating class action and representative matters. (Sung Decl., ¶¶ 2-7.) Plaintiff's counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Sung Decl., ¶¶ 5-7.) Because it is reasonable to compensate Plaintiff's counsel commensurate with their skill, reputation, and experience, Plaintiff's counsel's requested fee award is supported here. Plaintiff's counsels' experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation.

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

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

Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].)

Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id*.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id*. at pp. 556–57.) Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.)

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

Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Lab. Code § 2699(g)(1).) Although PAGA does not provide a specific standard for evaluating attorneys' fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to "cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys' fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method." (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].) The court in *Hermosillo* granted, in part, a plaintiff's counsel's unopposed motion for attorneys' fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement fund was requested for fees. (*Hermosillo*, at *1–3.)

Here, Plaintiff's counsel's current lodestar is $97,940.00 for 134.10 hours of work, broken down as:

Name	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
William C. Sung (14th Year Attorney)	$1,019	$900	72.30	$65,070.00
Tiffany L. Luu (5th Year Attorney)	$625	$550	39.40	$21,670.00
Joseph C. Ramli (5th Year Attorney)	$625	$500	22.40	$11,200.00

(Sung Decl., ¶¶ 31-33.)

Plaintiff's counsel's requested fee award represents a **negative 0.41** lodestar multiplier. (Sung Decl., ¶ 31.) Additionally, Plaintiff's counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (Sung Decl., ¶ 34.) These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.*)

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

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

Plaintiff's counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's counsel may request reimbursement of costs up to $20,000.00. (Agreement, § 13.) Plaintiff's litigation costs are approximately $16,662.50, including estimated future costs in filing this Motion and supporting papers ($77.97), CourtCall appearance fee ($15.50), any supplemental filings for this Motion ($16.17), and filing of the Settlement Administrator's declaration of compliance re settlement administration ($16.17). (Sung Decl., ¶ 17; Exh. 4.) These expenses were reasonably necessary to the litigation and were actually incurred. Moreover, these expenses are below the maximum amount allowed in the Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs should be reimbursed in full, up to the maximum amount allowed in the Settlement.

D. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES

Pursuant to the terms of the Settlement, the fees and costs of the Settlement Administrator, are to be paid out of the common fund. (Agreement, § 14.) The settlement administration fees are based on a flat-sum amount of $4,425.00. (*Id.*; Admin. Decl., ¶ 7, Exh. B.) The Settlement Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing Aggrieved Employees' names and addresses against the National Change of Address database ("NCOA") prior to mailing, setting up and managing a Qualified Settlement Fund ("QSF") Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiff's counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶ 4-7; Agreement, §§ 17-19.) All of these duties are included in the agreed-upon flat fee of $4,425.00. Thus, the Administrator's fees should be approved.

E. PROOF OF SERVICE OF SETTLEMENT AND ALL MOVING PAPERS ON THE LWDA

On July 16, 2026, Plaintiff's counsel served the LWDA via filing through its online portal at https://dir.govfa.net/432 (Proposed Settlement of PAGA Case) with a copy of the fully executed Agreement, this Motion, supporting declarations, and the Proposed Judgment and Order. (Sung Decl., ¶ 36, **Exh. 5** – LWDA Filing Confirmation.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the proposed Settlement, sign the (Proposed) Judgment and Order submitted herewith.

DATED: July 16, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Attorneys for Plaintiff FELIPE HERNANDEZ