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County of Marin
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

MARY WILKER, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

SAN RAFAEL OPERATING COMPANY,
LP, a Delaware Limited Partnership;
MARINER HEALTH CENTRAL, Inc., a
Delaware Corporation, and DOES 1-100,
inclusive,

Defendants.

CASE NO. CV0001580

CLASS ACTION

Hon. Stephen Freccero

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR COURT APPROVAL OF
PAGA SETTLEMENT**

Date: TBD 07/08/2025

Time: TBD 1:30 pm

Dept.: A

Action filed: December 14, 2023

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Plaintiff has agreed to settle the PAGA claims for a Gross Settlement Amount of Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00). The settlement is a fair compromise after approximately one (1) year of litigating the matter, which included informal discovery used for mediation.

In exchange for such payment, the Aggrieved Employees, the state of California, and the LWDA are releasing Defendant from all claims for PAGA claims that were alleged or reasonable could have been alleged, based on the facts stated in the First Amended Complaint and PAGA Notice during the PAGA period.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

- 1 -

1 Inc. (“Mariner”) (hereinafter collectively referred to as “Defendants”) which alleged causes of
2 action for: 1.) Violation of Unfair Competition Law; 2.) Failure to Pay All Wages; 3.) Meal Period
3 Violations; 4.) Waiting Time Penalty; 5.) Wage Statement Penalty; 6. Rest Period Violations.

4 Plaintiff filed a First Amended Complaint (“FAC”) on January 25, 2024, which added a
5 claim for PAGA penalties to the Class Action based on the following theories, among others: (1)
6 Unpaid Wages (Off-the-Clock); (2) Meal Break Violations; (3) Rest Break Violations; (4) Wage
7 Statement Violations; and (5) Waiting Time Penalties.

8 The parties met and conferred regarding a potential motion to compel arbitration and agreed
9 to dismiss the class claims pursuant to a Stipulated Order that was entered on August 15, 2024.

10 On December 3, 2024, the parties participated in an all-day mediation presided over by
11 respected wage and hour mediator Jeff Winikow, which led to an agreement to settle the action.
12 Prior to the mediation, there was an informal exchange of data, and Plaintiff hired an expert to
13 prepare an exposure analysis.

14 **III. SUMMARY OF SETTLEMENT**

15 **A. Aggrieved Employees**

16 The Settlement covers the following aggrieved employees: All hourly non-exempt
17 employees of SROC employed in California at the Pine Ridge facility, during the relevant time
18 period of December 14, 2022, through January 31, 2025, or the date of Court approval of the
19 Settlement, whichever comes first.

20 Based upon Defendant’s records, there are approximately 231 Aggrieved Employees who
21 worked a total of 7,794 PAGA Pay Periods from January 25, 2023, through December 3, 2024.

22 **B. Settlement Fund**

23 The Net Settlement Amount shall be calculated by deducting the Individual PAGA
24 Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation
25 Expenses Payment, the Representative Service Payment, and the Administration Expenses Payment
26 from the Gross Settlement Amount. Pursuant to the PAGA statute, one hundred percent of the Net
27 Settlement Amount shall be considered payment of penalties and thus will not be subject to local,
28 state, or federal payroll taxes or withholdings (**Carney Decl.; Exhibit 1**).

A breakdown of the Gross Settlement Amount of **\$205,000.00** is provided below:

1. Total PAGA Penalties: \$113,900.00
 - Net Distribution Amount to Aggrieved Employees: \$28,475.00 (25%);
 - Net Distribution Amount to the LWDA: \$85,425.00 (75%);
2. PAGA Counsel Fees Payment: \$71,750.00;
3. PAGA Counsel Litigation Expenses Payment: \$15,000.00;
4. Representative Service Payment to Plaintiff: \$1,000.00;
5. Administrator Expenses Payment: \$3,350.00 (**Carney Decl. ¶23, Exhibit 4**).

C. Release (See Carney Decl., Exhibit 1, ¶5 et seq)

Effective on the date when SROC fully funds the entire Gross Settlement Amount, Plaintiff, all Aggrieved Employees, the State of California, the LWDA, and PAGA Counsel will release claims against all Released Parties as follows:

Plaintiff's Release. Upon approval of the settlement by the Court, all Aggrieved Employees (including Plaintiff), the state of California, and the LWDA shall release all claims pled or that could have been pled in the First Amended Complaint for Marin County Superior Court Case No. CV0001580 ("Complaint") pursuant to the Labor Code Private Attorneys' General Act ("PAGA"), California Labor Code §§ 2698, et seq., deriving from and/or based on the facts alleged in the Complaint and Plaintiff's PAGA letter, arising out of or related to work performed for SROC and/or MHCI during the PAGA Period upon approval of the settlement, including claims for penalties, interest, attorneys' fees and/or costs. The release shall encompass all claims, causes of action or liability pursuant to the PAGA, including but not limited to any penalties based on alleged violations of the IWC Wage Orders or California Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, and 2698, et seq. The settlement shall be effective to adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against SROC for the released Labor Code and/or Wage Order violations suffered by any of the Aggrieved Employees (i.e., entry of Judgment shall have res judicata effect as to those claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to PAGA). The release shall include SROC, and its owners, agents, attorneys, insurers, past, present, and future divisions, DBAs (if any), predecessors, successors, shareholders, officers, directors, managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries.

Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the

1 release, and that if known by him or her would have materially affected his or
2 her settlement with the debtor or Released Party.

3 **Release by Aggrieved Employees and the LWDA:**

4 All Aggrieved Employees, the state of California, and the LWDA are deemed to
5 release, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
7 Released Parties from all claims for PAGA claims that were alleged, or reasonably
8 could have been alleged, based on the facts stated in the Complaint and the PAGA
9 Notice, and alleged in the Action, including but not limited to claims for all alleged
10 Labor Code and Wage Order violations specified therein. The settlement shall be
effective to adjudicate and release the claims and/or rights of the LWDA to recover
civil penalties against SROC for the released Labor Code and/or Wage Order
violations suffered by any of the Aggrieved Employees (i.e., entry of Judgment shall
have res judicata effect as to those claims of the LWDA, whether pursued directly
by the LWDA or by a representative pursuant to PAGA).

11 **Release by PAGA Counsel:**

12 PAGA Counsel release on behalf of their present and former attorneys, employees,
13 agents, successors and assigns the Released Parties from all claims for PAGA
14 Counsel Fees incurred in connection with the Complaint and the PAGA Period facts
15 stated in the Complaint, the PAGA Notice, and alleged in the Action, including but
not limited to claims for all alleged Labor Code and Wage Order violations specified
therein.

16 **IV. LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

17 The PAGA statute allows an “aggrieved employee” to bring a civil action on behalf of
18 himself or herself and on behalf of other aggrieved employees and the State to recover civil
19 penalties which are specifically established by the PAGA with respect to provisions of the
20 California Labor Code which does not otherwise provide for civil penalties (*Labor Code* §
21 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and
22 collect from an employer (*Labor Code* § 2699(a)). Before bringing a civil action under PAGA, an
23 employee must comply with *Labor Code* §2699.3. See *Labor Code* §2699(a).

24 The settlement of a PAGA claim requires court approval. See *Labor Code* §2699(1)(2)
25 (“The superior court shall review and approve any settlement of any civil action pursuant to this
26 part”). However, “A PAGA claim asserted on a non-class representative basis . . . is not considered
27 a class action but a law enforcement action” and therefore one does not have to meet the
28 requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal.

1 Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2,
2 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (affirming lower court’s holding that
3 “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart,*
4 *Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). A court reviewing a PAGA settlement
5 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
6 *Court*, 3 Cal.5th 531, 549 (2017).

7 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
8 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
9 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for
10 the government that otherwise may not have been assessed and collected by overburdened state
11 enforcement agencies.” See *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
12 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
13 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
14 education of employers and employees about their rights and responsibilities under this code, to be
15 continuously appropriated to supplement and not supplant the finding to the agency for those
16 purposes.” See *Labor Code* § 2699(j). The recovery of penalties on behalf of the state, by way of a
17 PAGA claim, is essentially a law enforcement action. See *Amalgamated Transit Union, Local*
18 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
19 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
would be sought by state labor law enforcement agencies”).

20 **V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

21 The Settlement fulfills the purposes of the PAGA, and is fair, adequate and reasonable.

22 **A. The Settlement Is Presumed Fair**

23 A representative settlement is presumed fair where: (1) the settlement is reached through
24 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
25 court to act intelligently, (3) [and] counsel is experienced in similar litigation. (*See Dunk v. Ford*
26 *Motor Company (1996)* 48 Cal. App. 4th 1794, 1802.) A court may also consider factors such as
27 the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,

1 the extent of discovery completed and the stage of the proceedings, the experience and views of
2 counsel, [and] the presence of a governmental participant. . . . (See *Officers of Justice v. Civil*
3 *Service Com’n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d 615, 624.) “This list is
4 not exhaustive and should be tailored to each case. Due regard should be given to what is
5 otherwise a private consensual agreement between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at
6 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
7 action] settlement is fair. (See *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) *Moniz v.*
8 *Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021) expressly holds that the standard for reviewing
9 PAGA settlements is similar to the standard for reviewing class settlements, and therefore class
10 cases (including *Dunk* specifically) are instructive in this context.

11 **B. The Settlement is the Product of Arm’s Length Negotiations**

12 The stage of the proceedings and the amount of discovery completed are important factors
13 for courts to consider in determining whether a settlement is fair, adequate and reasonable. (See *In*
14 *re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, *affd.*, 198 F.2d 35 (2d
15 Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*, 661 F.2d
939 (9th Cir. 1981).)

16 The parties participated in an informal exchange of data (including time and pay data for the
17 Aggrieved Employees during the PAGA Period.) Plaintiff hired an expert, and was preparing for
18 the Arbitration hearing when the parties agreed to mediation.

19 The parties attended a mediation On December 3, 2024, the parties participated in an all-day
20 mediation presided over by Jeff Winikow. All of the parties’ negotiations have been non-collusive
21 and involved disputes over payment terms. Plaintiff did not settle this case until she and her
22 counsel conducted sufficient investigation into the claims. Further, the LWDA has had the
23 opportunity to review and investigate the claims in the First Amended Complaint and has not taken
24 any further action in response as of the date of this motion. (**Decl. Carney ¶ 24**).

25 **C. Plaintiff’s Counsel is Experienced in Similar Litigation**

26 The view of attorneys in representative litigation is “entitled to significant weight.” (*Fisher*
27 *Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis,*
28 *supra*, 87 F.R.D. at 18.) Plaintiff’s counsel has significant experience in complex, representative,

1 and class action wage and hour litigation. As such, they are experienced and qualified to evaluate
2 the claims and defenses in this case, and unequivocally support the settlement reached herein.

3 (Decl. Carney ¶2-8)

4 **D. The Strength of Plaintiff's Case, The Amount Offered in Settlement, and The**
5 **Risk, Expense, Complexity, and Duration of Further Litigation Favors**
6 **Settlement**

7 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
8 *v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, "[t]he expense and possible
9 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement."
10 (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

11 **1. Total Exposure of PAGA Penalties**

12 As stated above, during the PAGA period, there were total of 7,794 PAGA Pay Periods
13 from January 25, 2023, through December 3, 2024, for 231 aggrieved employees. Because there is
14 no evidence that Defendant has been the subject of prior *Labor Code* citations for the conduct
15 alleged, subsequent penalty amounts are unlikely here. See *Amaral v. Cintas Corp. No. 2*, 163
16 Cal.App.4th 1157, 1208-1209 (2008) ("Until the employer has been notified that it is violating a
17 Labor Code provision. . . , the employer cannot be presumed to be aware that its continuing
underpayment of employees is a 'violation' subject to penalties").

18 **A. Failure to Pay All Wages:**

19 Plaintiff alleges that Defendants failed to pay Plaintiff and the aggrieved employees for all
20 hours they worked. Specifically, Plaintiff alleges that Defendants consistently administered a
21 corporate policy regarding both staffing levels and duties and responsibilities of the Aggrieved
22 Employees which required them to clock out but continue working through meal breaks. Labor
23 Code section 1197.1 mandates that employers pay employees at least the minimum wage for all
24 hours worked. This includes any time during which an employee is subject to the control of the
25 employer and any work performed off the clock. Plaintiff alleges that the Aggrieved Employees
26 were not compensated for all hours worked, including hours worked off the clock and during
27 periods when they were required to work through their meal breaks while clocked out. These
28 practices effectively resulted in the Aggrieved Employees performing work without receiving the

1 legally required minimum wages or overtime pay for those hours.

2 The maximum PAGA liability for minimum wage violations is $7,794 \times \$100$ (Labor Code
3 $1197.1) = \$779,400$. With respect to overtime violations, the potential maximum PAGA penalty is
4 $7,794$ workweeks $\times \$100$ (Labor Code 2699) = $\$779,400$. Given the substantial defenses presented
5 by Defendant and the challenges in proving widespread minimum wage violations, a risk
6 adjustment of 10% of the maximum potential liability is appropriate. Therefore, the risk-adjusted
7 liability for minimum wages violations is calculated as $\$779,400 \times 10\% = \$77,940$. Similarly, the
8 risk-adjusted liability of the overtime violations is $\$779,400 \times 10\% = \$77,940$. See Carney Decl
9 ¶12.

10 **B. Violation of Meal Period Provisions**

11 Plaintiff alleges that Defendants failed to provide legally compliant off-duty meals in
12 addition to impeding, discouraging and/or dissuading employees from taking legally compliant
13 meal periods on shifts either by requiring Plaintiff and the aggrieved employees to remain on
14 premises and return to calls or by failing to provide enough relief to allow Plaintiff and the
aggrieved employees to take off-duty meals.

15 Labor Code section 512 and the applicable Wage Orders require employers to provide non-
16 exempt employees with meal periods of at least 30 minutes for work periods exceeding five hours,
17 and a second meal period for work periods exceeding ten hours. These meal periods must be
18 uninterrupted, with employers relieving employees of all duties, relinquishing control over their
19 activities, and allowing employees a reasonable opportunity to take their full 30-minute break. If an
20 employer fails to provide a compliant meal period, it must pay the employee one additional hour of
21 pay at the employee's regular rate of compensation for each workday that the meal period is not
22 provided.

23 Plaintiff's theory of liability is that Defendant failed to provide compliant off-duty meal
24 periods to Plaintiff and the Aggrieved Employees. Specifically, Plaintiff alleges that Defendant
25 maintained a policy and practice of requiring employees to remain on premises and respond to calls
26 even during their meal breaks, or failed to provide sufficient staffing to relieve employees for
27 breaks, thereby impeding, discouraging, or dissuading them from taking compliant breaks.
28 Furthermore, Plaintiff contends that employees were required to clock out for meal breaks

1 regardless of whether a compliant break was actually taken, and that Defendant failed to pay missed
2 meal period premiums at the regular rate of pay.

3 Based on a total of 7,794 pay periods during the PAGA Period, and applying the \$50
4 penalty under Labor Code section 558, the maximum theoretical exposure for meal break violations
5 would be $7,794 \times \$50 = \$389,700$.

6 However, Defendant presents strong defenses that substantially reduce the likelihood of
7 recovering the maximum penalty amount. Time record analysis shows minimal violation rates: only
8 1.1% for missed first meal periods, 19.5% for late first meal periods, and 0.1% for short first meal
9 periods. Defendant maintains that any non-compliant meal periods were due to employees'
10 voluntary choices rather than company policy or practice.

11 Given these substantial defenses, the low violation rates, and documented compliance
12 efforts, a risk adjustment to 10% of the maximum potential liability is appropriate. Therefore, the
13 risk-adjusted liability is $\$389,700 \times 10\% = \$38,970$. This adjustment acknowledges both the court's
14 discretion to reduce PAGA penalties under Labor Code section 2699(e)(2) when they would be
15 unjust, arbitrary, oppressive, or confiscatory, and the significant challenges Plaintiff would face in
16 proving widespread violations were the result of Defendant's policies rather than employee choice.
(See **Carney Decl Exhibit 12**)

17 **Rest Breaks**

18 The Wage Orders require employers to authorize and permit employees to take rest periods
19 at the rate of 10 minutes net per four hours or major fraction thereof. Employers must relieve
20 employees of all duties during rest periods and allow them to leave the premises, or else pay a
21 premium at the regular rate of pay. If an employer fails to provide a compliant rest period, it must
22 pay the employee one additional hour of pay at the employee's regular rate of compensation for
23 each workday that the rest period is not provided.

24 Plaintiff alleges that Defendants failed and/or refused to implement a relief system by which
25 Plaintiff and the hourly aggrieved employees could receive rest breaks for every four hours of their
26 shift. Additionally, Plaintiff alleges that Defendants required Plaintiff and the aggrieved employees
27 to remain on-premises for their rest breaks. By and through its actions, Defendant intentionally and
28 improperly denied duty-free, off-premises rest periods to the Plaintiff and those aggrieved

1 employees in violation of Labor Code §§226.7 and 512.

2 Therefore, as with the meal periods, Defendants fail to relieve the employees of all duties
3 during their rest breaks since they would still be under direction and control of the Defendant
4 during their 10-minute rest breaks, as well as impeding and discouraging them from taking
5 compliant rest breaks.

6 Second, Plaintiff contends that Defendant required employees to remain on the premises
7 during their rest breaks, in direct conflict with the California Supreme Court's decision in *Augustus*
8 *v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016), which held that employees must be relieved
9 of all duties and employer control during breaks. Third, Plaintiff alleges that Defendant improperly
10 limited the number of rest breaks employees were permitted to take, routinely compelling
11 employees who worked shifts longer than four hours to take only one rest break, even when entitled
12 to two or more. Plaintiff is informed and believes that these practices resulted in both the denial of
13 required breaks and the provision of on-duty, non-compliant breaks.

14 Based on a total of 7,794 pay periods during the PAGA Period, and applying the \$100
15 penalty under Labor Code section 2699, the maximum theoretical exposure for rest break violations
16 would be $7,794 \times \$500 = \$779,400$.

17 However, Defendant presents several strong defenses that substantially reduce the
18 likelihood of recovering the maximum penalty amount. Defendant represents that its time records
19 reflect low rates of meal break violations, and it follows that rest break violations follow the same
20 pattern. Defendant further asserts that it did not prohibit employees from leaving the premises
21 during breaks and that any missed or shortened breaks were the result of employee choice or
22 isolated management decisions, not a uniform policy or practice, and that it had lawful rest break
23 policies in place throughout the PAGA Period.

24 Given these substantial defenses, the low violation rates, and the inherent difficulties in
25 proving rest break violations, a risk adjustment to 10% of the maximum potential liability is
26 appropriate. Therefore, the risk-adjusted liability for the rest break claim is: $\$779,400 \times 10\% =$
27 $\$77,940$. This adjustment acknowledges both the court's discretion to reduce PAGA penalties under
28 Labor Code section 2699(e)(2) when they would be unjust, arbitrary, oppressive, or confiscatory,
and the significant challenges Plaintiff would face in proving widespread violations were the result

1 of Defendant's policies rather than employee choice.

2 **Wage Statement Violations:**

3 The wage statement claims in this matter arise as derivative violations under Labor Code
4 section 226(a). The derivative claims stem from Defendant's alleged failure to properly record and
5 pay all hours worked and accurately calculate the regular rate of pay. Additionally, The wage
6 statement violations are derivative of the unpaid time and meal and rest break violations. Assuming
7 a violation on every single wage statement over the 7,794 pay periods at issue, the maximum
8 theoretical value of this claim is $7,794 \times \$100$ per Labor Code 2699 = \$779,400.

9 However, because this claim is derivative, defeating liability on the underlying claims also
10 defeats liability on the Wage Statement claim. Even if the underlying claim prevails, Defendant
11 could counter that any alleged omission of information from the wage statements was not knowing
12 and intentional, which could negate wage statement penalties. Moreover, Defendant argues
13 derivative violations of Labor Code § 226 do not give rise to pay stub violations upon which PAGA
14 penalties arise –See *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); see also
15 *Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196 (E.D. Cal. 2017). Defendant further argues
16 that any such violations were inadvertent, and therefore not actionable. See *Heritage Residential*
17 *Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 75 (2011). Consequently,
18 Plaintiff estimates that the risk-adjusted liability on this claim is 10% of its maximum value, or
\$77,940.

19 **C. Waiting Time Penalties:**

20 Similarly, the waiting time penalties are derivative from the off the clock and missed break
21 allegations, which are recoverable consistent with *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13
22 Cal.5th 93. Defendant further argues that its failure to pay wages upon separation was not “willful,”
23 in that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a
24 good faith dispute. See *Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer’s
25 failure to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters*
26 *Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness
27 not met if defendant’s failure to pay a result of a “good faith mistaken belief that wages are not
28 owed”).

1 Accordingly, the Kullar analysis for waiting time penalties is that There are 97 aggrieved
2 employees who were terminated, so the theoretical maximum PAGA liability is 97 x \$100 (Labor
3 Code 2699) = \$9,700.

4 **Fairness of the Settlement**

5 The proposed settlement amount of \$205,000.00 represents approximately 58.3% of the
6 risk-adjusted maximum PAGA penalties of \$351,700, making it an excellent result for the
7 Aggrieved Employees given the substantial risks and uncertainties of continued litigation. Beyond
8 the claim-specific risks detailed above, several additional factors support the reasonableness of this
9 settlement.

10 First, recovery through continued litigation would require Plaintiff to prevail on complex
11 legal issues regarding the proper treatment of per diem payments and the compensability of pre-
12 employment activities. These issues would likely require expensive expert testimony and extensive
13 motion practice, with no guarantee of success. Second, establishing PAGA penalties requires a
14 showing that violations were knowing and intentional, and courts have significant discretion to
15 reduce PAGA penalties even where liability is established. Third, the settlement provides
16 immediate relief to Aggrieved Employees without the delay, expense, and uncertainty of prolonged
litigation, which could take years to resolve through trial and potential appeals.

17 Plaintiff further believes this to be a good result, given that there is a substantial question as
18 to whether a trial court will even award cumulative penalties sought by Plaintiff for alleged
19 multiple *Labor Code* violations because there is no precedent for such an award. Moreover, *Labor*
20 *Code* § 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: “[A] court
21 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
22 on the facts and circumstances of the particular case, to do otherwise would result in an award that
23 is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s discretion in
24 downgrading penalties based on these factors. See *Thurman v. Bayshore Transit Management,*
25 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
26 percent).

27 Because of the discretionary nature of PAGA penalties, oftentimes the penalties are
28 discounted by approximately 75%-85%. See, e.g., *Magadia v. Wal-Mart Associates, Inc.* (N.D.

1 Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage statement claim reduced by
2 80%); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, *4.

3 Plaintiff asserts the PAGA settlement of \$205,000.00 is 58.3% of the maximum risk
4 adjusted exposure. As explained below, the PAGA settlement is within the range of reasonableness
5 when viewed in tandem with the attendant risks described above.

6 **The Settlement is Within the Range of Reasonableness**

7 “In determining whether the proposed settlement falls within the range of reasonableness,
8 perhaps the most important factor to consider is plaintiff’s expected recovery balanced against the
9 value of the settlement offer.” (*Cotter v. Lyft* (N.D. Cal. 2016) 176 F.Supp.3d 930, 936.)

10 **VI. NOTICE OF THE SETTLEMENT IS NOT REQUIRED**

11 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
12 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
13 *Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA
14 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*
15 *v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A representative PAGA
16 action need not satisfy class action requirements, and no due process concern arises from the fact
17 that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be
18 heard in, a representative action that is not brought as a class action.” *Arias v. Sup. Ct.*, 46 Cal.4th
19 969, 984 (2009). “PAGA does not make other potentially aggrieved employees parties” to the
20 action and no “due process concerns arise under PAGA because absent employees do not own a
21 personal claim for PAGA civil penalties and whatever personal claims the absent employees might
22 have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal references
23 omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th Cal.4th 993,
1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014).)

24 Moreover, Plaintiff has served (uploaded) the LWDA with the Settlement Agreement and
25 will upload this motion and supporting documents after they are filed (**Carney Decl. ¶24; Exhibit**
26 **6**).

27 **VII. PLAINTIFF’S ATTORNEYS’ FEES, COSTS, AND ADMINISTRATIVE EXPENSES**
28 **ARE FAIR AND REASONABLE**

1 Pursuant to the PAGA Settlement Agreement, Plaintiff's counsel requests that this Court
2 approve an award of attorneys' fees of \$71,750.00, or 35% of the total PAGA settlement. Pursuant
3 to *Labor Code* § 2699 subd. (g)(1): "Any employee who prevails in any [PAGA] action shall be
4 entitled to an award of reasonable attorney's fees and costs."

5 **A. Fees Can Be Awarded as A Percentage of the Common Fund**

6 When a common fund is created, attorneys who secured the fund are entitled to a percentage
7 of the fund. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may
8 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
9 created"]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have
10 traditionally been allowed in . . . common fund cases"]). Plaintiff's request for 35% of the common
11 fund is reasonable, and is fair compensation for undertaking complex litigation on a contingent
12 basis. (See, e.g., Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying
13 cases and finding that 30-50% of fees awarded in cases in which the common fund is relatively
14 small]; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court
15 approved attorney fee award equal to 45% of the settlement fund].)

16 Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for
17 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from
18 the fund as a whole." (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Laffitte, supra*,
19 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial
20 courts"]); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who expends attorneys' fees in winning a
21 suit which creates a fund from which other derive benefits, may require those passive beneficiaries
22 to bear a fair share of the litigation costs"].)

23 Because Plaintiff's attorneys secured a successful PAGA settlement, they are entitled to a
24 reasonable percentage of that fund.

25 **B. Plaintiff's Attorneys Fees Are Also Recoverable Under the Lodestar**
26 **Adjustment Approach**

27 Fees in representative cases are also appropriate under the lodestar method, whereby the
28 number of hours reasonably expended is multiplied by a reasonable hourly rate. (See *Lealao, supra*,
82 Cal.App.4th at 26.) Once a lodestar has been established, it may "be adjusted, based on

1 consideration of factors specific to the case, in order to fix the fee at the fair market value for the
2 legal services provided.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). In
3 evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the
4 qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the
5 case, the contingent nature of the case, the results achieved, and related matters. (See, e.g., *Serrano*,
6 *supra*, 20 Cal.3d 25, 49; see also *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-322.) All
7 such factors support the fee award here.

8 **1. Plaintiff’s Counsel Are Well-Qualified to Represent the Aggrieved**
9 **Employees and their Rates Are Reasonable**

10 Counsel for Plaintiff is experienced employment lawyers and have extensive experience in
11 the specific subcategory of wage and hour claims (**Carney Decl. ¶2-8**). Moreover, counsel for
12 Plaintiff have hourly rates that are reasonable in the relevant market. (**Carney Decl. ¶21**).

13 **2. Plaintiffs’ Counsel’s Lodestar Is Well Documented**

14 A properly supported motion for attorney's fees is prima facie evidence that the expenses
15 and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) Here,
16 counsel provides an appropriately detailed declaration (**Carney Decl. ¶21-22**). Plaintiff’s counsel’s
17 collective hours to date are 143.6. Plaintiff anticipates that counsel will incur up to another 10-15
18 hours to appear at the hearing, ensure the settlement receives approval, and comply with the filing
19 of post hearing filings once the settlement is distributed to the aggrieved employees as well as
20 answer any questions any Aggrieved Employee may have (**Carney Decl. ¶21**)

21 **3. Novelty And Difficulty of The Case**

22 Given Defendant’s employees are all working various shifts with various managers and/or
23 supervisors, manageability issues, may have presented a problem. While meal records are
24 recorded, rest breaks are not and there is a dispute whether employees can waive their rights to take
25 rest breaks.

26 **4. Plaintiff’s Counsel Worked Efficiently and Skillfully**

27 Since the beginning of this case, Plaintiff’s counsel worked diligently for the aggrieved
28 employees, both in the PAGA case and in Plaintiff’s individual claims, with an eye at proving the
claims on a representative basis once the individual trial was concluded.

1 **5. Plaintiff's Counsel Worked Entirely on A Contingency Basis**

2 Plaintiff's counsel worked on a complete contingency and advanced all expenses and costs.
3 The contingent risk included liability issues, damage issues, and evolving changes under PAGA.
4 According to the California Supreme Court:

5 A contingent fee must be higher than a fee for the same legal services paid as they
6 are performed. The contingent fee compensates the lawyer not only for the legal
7 services he renders but for the loan of those services. The implicit interest rate on
8 such a loan is higher because the risk of default (the loss of the case, which cancels
9 the debt of the client to the lawyer) is much higher than that of conventional loans.
 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic*
 Analysis of Law (4th ed. 1992) pp. 534, 567.)

10 **6. Plaintiff's Counsel Achieved a Good Result**

11 Plaintiff's counsel believes the \$205,000.00 PAGA settlement is a good result given the
12 substantial risks of going to trial on this case and the discretionary nature of the penalties.

13 **C. Plaintiffs' Counsel's Costs and Administrative Expenses Are Appropriate**
14 **and Well Documented**

15 Plaintiff's counsel is also entitled to their reasonable out-of-pocket costs incurred in
16 prosecuting this action. Plaintiff's counsel has incurred costs of approximately \$12,576.17 as of the
17 date of filing this motion (not including the cost of filing the herein motion or any subsequent
18 documents to be filed). It is anticipated that additional costs will be incurred for final filing costs
19 for the motion and the post motion filings of approximately \$500.00. The costs incurred were
20 necessary to prosecute this case (**Carney Decl., ¶19**). Moreover, after obtaining two quotes to be
21 the administrator, ILYM Group, Inc. has agreed to provide settlement administration services in the
22 amount of \$3,350.00 including preparing and mailing the notices to the Aggrieved Employees,
23 distributing the payments, and performing other administration duties for this PAGA settlement
24 (**Carney Decl., ¶23**). All such amounts should be deducted from the common fund created, and
25 Defendant does not oppose Plaintiff's counsel's request for costs up to \$15,000.00 and
26 administration costs up to \$3,350.00.

26 **D. Plaintiff's Enhancement**

27 The Settlement Agreement sets forth the amount of the enhancement request being sought
28

1 for the Plaintiff. Plaintiff seeks an award of One Thousand Dollars (\$1,000.00) for the time, effort,
2 and risks associated with bringing this action. Both class and PAGA named plaintiffs receive an
3 incentive or enhancement payment. Incentive awards “are fairly typical in class action cases.”
4 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive
5 awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009).
6 Incentive awards “are intended to compensate class representatives for work done on behalf of the
7 class, to make up for financial or reputational risk undertaken in bringing the action, and,
8 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d
9 at 958–59. In both, class and representative actions, the incentive/enhancement award is meant to
10 reward the individual employee for bringing the lawsuit. See, e.g., *Clark*, 96 Cal.Rptr.3d at 455
11 (incentive award is to induce the plaintiff to file a class action); *Dunlap v. Superior Court*, 47
12 Cal.Rptr.3d 614, 617-618 (Cal. Ct. App. 2006) (PAGA was adopted to enhance the enforcement
13 abilities of the Labor Commissioner).

14 Without the named plaintiff the state would not have the ability to enforce *Labor Code*
15 violations throughout the state. Since being an aggrieved employee is a necessary requirement as a
16 private attorney general under the PAGA statute, the Plaintiff should be provided an award for
17 remedying the wrongs asserted. “Since without a named plaintiff there can be no class action, such
18 compensation as may be necessary to induce him to participate in the suit could be thought the
19 equivalent of the lawyers' nonlegal but essential case specific expenses, such as long distance phone
20 calls, which are reimbursable.” (*Clark v. American Residential Services, LLC* 175 Cal.App.4th 785,
21 804, 96, (2009) fn. omitted, citing *Matter of Continental Illinois Securities Litigation*, 962 F.2d
22 566, 571 (7th Cir.1992).) The same rationale is applied to the named plaintiff representing the state
23 to enforce the labor code violations.

24 In today's internet driven society, any potential employer who conducts an internet search of
25 the Plaintiff in connection with a job application will easily learn that she served as a representative
26 plaintiff in an action against her employer.

27 Plaintiff asserts that it is likely that the courage evidenced by the Plaintiff may well result in
28 her future denial of employment, without ever being told that her lead role in this case was the
cause. It has been recognized by no less than the California Supreme Court that: ...retaliation

1 against employees for asserting statutory rights under the Labor Code is widespread," and that
2 "retaliation . . . cause(s) immediate disruption of the employee's life and economic injury. (*Gentry*
3 *v. Superior Court*, (2007) 42 Cal.4th 443, 461.)

4 Plaintiff submits the amount sought is well within the range of reasonableness for such
5 awards in other wage and hour class and representative actions. (*Nelson v. Avon 5 Prod., Inc.* (N.D.
6 Cal. Feb. 24, 2017) 2017 WL 733145, at *7 (approving incentive award of \$10,000 where plaintiff
7 "appeared for an all-day deposition, searched for documentation relating to the class action,
8 reviewed documents and settlement papers, attended the mediation and subsequent negotiations,
9 and aided Class Counsel with negotiation efforts."); *Torchia v. W.W. Grainger, Inc.* (E.D. Cal.
10 2014) 304 F.R.D. 256 (approving \$7,500 incentive award). Here, Plaintiff's proposed service award
11 is well within the typical range cited by the court in approval.

12 Plaintiff was regularly called upon to assist in the prosecution of this case. Plaintiff spent
13 many hours meeting with and being interviewed by counsel, searching for, and producing
14 documents from her employment with Defendant (**Wilker Decl., ¶¶ 3-4**). Plaintiff spent many
15 additional hours assisting in reviewing documents produced by Defendant. Plaintiff was regularly
16 involved in the process of educating counsel as to the details of the procedures allegedly employed
17 by Defendant, all of which information was invaluable to Plaintiff's Counsel. Plaintiff made herself
18 available throughout the entire day of mediation and continued to make herself available
19 throughout the approval process. (*Id.*). Plaintiff was always totally committed to the litigation, and
20 devoted regular attention to the matter. Indeed, her declaration filed concurrently herewith
21 demonstrates that she was personally involved in the prosecution of this lawsuit. In short, Plaintiff
22 was an ideal representative plaintiff for the aggrieved employees she stood for, and greatly
23 facilitated the litigation process.

24 The incentive award is also justified in light of the general release that Plaintiff was required
25 to sign. Under the *Cal. Civ. Code* § 1542 release, Plaintiff will release any and all claims she may
26 have against Defendant arising out of her employment. This general release is considerably broader
27 than the separate, narrower release required of the aggrieved employees, a consideration that further
28 supports the requested incentive awards.

The end result of that process is the Two Hundred Five Thousand Dollar (\$205,000.00)

1 settlement now before this Court. Plaintiff willingly assumed great risk by acting as a representative
2 Plaintiff, as is demonstrated in her declaration. It is probable that the stigma associated with
3 Plaintiff's involvement in prosecuting this case to its successful conclusion will play a significant
4 role in her ability to find future employment in California. As a representative Plaintiff, she has
5 performed this role admirably.

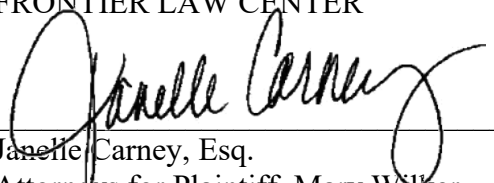
6 **CONCLUSION**

7 Based on the foregoing, Plaintiff respectfully requests that this Court grant her Motion to
8 Approve PAGA Settlement and enter the Order/Judgment accordingly.

9
10 Dated: April 11, 2025

JANELLE CARNEY- ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

11
12
13 By:



Janelle Carney, Esq.
Attorneys for Plaintiff, Mary Wilker