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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAVID AVILA and DAVID JUAREZ, on
behalf of the State of California, as private
attorneys general,

Plaintiffs,

v.

BEHR PROCESS CORPORATION, a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 30-2023-01366549-CU-OE-CXC

Assigned to the Hon. William D. Cluster

**PLAINTIFFS' UNOPPOSED MOTION TO
APPROVE THE SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004; MEMORANDUM OF POINTS
AND AUTHORITIES**

Hearing Information:

Date: October 24, 2025

Time: 9:00 a.m.

Dept.: CX101

Reservation No.: 74636772

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

2 **PLEASE TAKE NOTICE** that on October 24, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department CX101 of the Superior Court of the State of California, County of
4 Orange, located at the Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, California 92701,
5 before the Honorable William D. Claster, Plaintiffs David Avila and David Juarez will, and hereby do,
6 move the Court for an order approving a settlement pursuant to the Private Attorneys General Act of
7 2004, Labor Code § 2698, *et seq.* (“PAGA”).

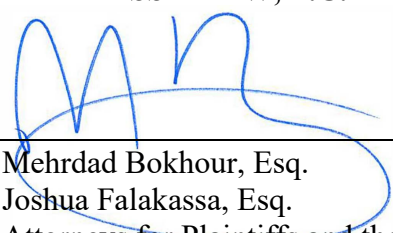
8 This unopposed motion seeks approval of a non-reversionary \$560,000 settlement reached after
9 mediation, which resolves all PAGA claims alleged in this action on behalf of non-exempt employees
10 who worked for Defendant in California during the PAGA period. The settlement allocates:

- 11 • 75% (presently estimated to be \$260,639.77) to the Labor and Workforce Development
12 Agency,
- 13 • 25% (presently estimated to be \$86,879.92) to the aggrieved employees, distributed pro
14 rata based on pay periods worked,
- 15 • up to \$186,666.67 in attorneys’ fees and \$21,883.84 in actual litigation costs,
- 16 • and up to \$4,000 in administration costs.

17 This motion is based on the Memorandum of Points and Authorities; the Declarations of
18 Plaintiffs’ Counsel Mehrdad Bokhour, Joshua Falakassa, and Kane Moon; the Declarations of Plaintiffs
19 David Avila and David Juarez; the PAGA Settlement Agreement; the proposed Order Granting Approval
20 of Settlement, all pleadings and papers on file, and any argument or evidence presented at the hearing.
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1 Dated: August 18, 2025

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

2
3
4 By: 

Mehrdad Bokhour, Esq.

5 Joshua Falakassa, Esq.

6 Attorneys for Plaintiffs and the Aggrieved Employees

7 **MOON LAW GROUP, P.C.**

8
9 By: /s/ Kane Moon

10 Kane Moon, Esq.

11 Julie Oh, Esq.

12 Allen Feghali, Esq.

13 Attorneys for Plaintiffs and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs David Avila and David Juarez (“Plaintiffs”)—each individually and on behalf of other
4 allegedly aggrieved employees, and acting as representatives of the State of California—brought this
5 representative action for civil penalties against their former employer, Defendant Behr Process LLC
6 (formerly Behr Process Corporation) (“Defendant,” together with Plaintiffs, the “Parties”) under the
7 Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). (Declaration
8 of Mehrdad Bokhour in Support of Plaintiffs’ Motion to Approve Settlement Pursuant to PAGA
9 (“Bokhour Decl.”), ¶ 40.)

10 A PAGA action is a type of *qui tam* proceeding that enables private citizens to assist the State of
11 California in enforcing labor laws. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348,
12 380–382.) In such an action, the State of California is the real party in interest. (*Id.* at 382.)

13 As required by statute, the State of California was timely served with a copy of the executed
14 PAGA Settlement Agreement by and between the Parties (“Settlement Agreement,” “S.A.,” or the
15 “Settlement”) and this Motion for Approval. (Bokhour Decl. ¶ 41.)

16 Plaintiffs’ claims are brought on behalf of all current and former hourly, non-exempt employees
17 who worked for Defendant at any time during the period December 20, 2022 through March 9, 2025 (the
18 “PAGA Members” or “Aggrieved Employees”). (S.A. ¶ I.13; Bokhour Decl. ¶ 9.)

19 The PAGA period is the period beginning on December 20, 2022 and ending on March 9, 2025
20 (“PAGA Period”). (*Id.*)

21 Plaintiffs allege that during the PAGA Period:

- 22 • Defendant failed to properly calculate and pay all hours worked, including all overtime
23 and sick time wages due to, among other things, off-the-clock work,
24 understaffing/scheduling, alternative workweek schedules, and/or violations of the
25 “regular rate of pay” requirements. (Bokhour Decl. ¶ 10.)
- 26 • Plaintiffs and the PAGA Members were denied compliant meal and rest periods, as a result
27 of Defendant’s policies, practices, and the nature of the work and were not paid rest or
28 meal period premiums at the “regular rate of pay.” (Bokhour Decl. ¶ 10.)

- Defendant failed to reimburse necessary business expenses, failed to timely pay wages, failed to pay timely wages at separation, including all vested vacation time, issued inaccurate itemized wage statements or otherwise failed to maintain records, refused to pay wages, made unlawful deductions, required unlawful agreements and waivers, and conducted unlawful inquiries into criminal history, thereby incurring civil penalties under the PAGA. (Bokhour Decl. ¶ 11.)

Following informal discovery—including the exchange and review of workplace policies, time and payroll data, and an exposure analysis based on the PAGA Members’ pay periods—the Parties participated in a private mediation before Hon. Carl J. West (Ret.), an experienced wage and hour mediator. (S.A. ¶ II.2.; Bokhour Decl. ¶ 12.) With the assistance of Judge West, the Parties were able to reach a resolution of the action. (Id.)

With a comprehensive Settlement Agreement now in place, Plaintiffs seek—without opposition from Defendant—the Court’s approval of a \$560,000 non-reversionary settlement resolving all claims alleged in this action pursuant to the PAGA. The settlement covers, as Defendants represented at mediation, approximately **500 PAGA Members and approximately 21,723 PAGA Pay Periods** during the PAGA Period. (S.A. ¶ III.10.) “PAGA Pay Period” means any pay period worked by a PAGA Member during the PAGA Period.

Following the proposed deductions of:

- Attorneys’ fees not to exceed \$186,666.67 (1/3 of the Gross Settlement Amount) (S.A. ¶ III.4.a),
- Actual litigation costs of \$21,830.84 (S.A. ¶ III.4.a; Bokhour Decl. ¶ 38), and
- Settlement administration expenses capped at \$4,000. (S.A. ¶ III.4.b; Bokhour Decl. ¶ 27.)

The balance of \$347,502.49 (the “Net Settlement Amount”) will be allocated as PAGA penalties in accordance with Labor Code § 2699(i). (S.A. ¶ IV.5.) Of that amount:

- 75% (*i.e.*, \$260,626.86) will be paid to the California Labor and Workforce Development Agency (“LWDA”), and

- 25% (*i.e.*, \$86,875.62) will be distributed to PAGA Members on a pro rata basis based on the number of PAGA Pay Periods worked during the PAGA Period. (S.A. ¶¶ III.5 and IV.5.)

This results in an average PAGA-only payment of approximately \$173.76 per employee, which is meaningful relief for the PAGA Members, given that the settlement does not release any individual damages or statutory claims, and the value is being distributed solely for representative penalties under PAGA. (S.A. ¶ III.6; Bokhour Decl. ¶ 28.)

This settlement merits full approval because it furthers the statutory goals of PAGA:

- To deter future California Labor Code (“Labor Code”) violations,
- To incentivize employer compliance with wage and hour laws,
- And to provide meaningful enforcement of California labor standards for the public benefit. (*See* Labor Code § 2698 et seq.; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

Approval of the settlement is governed by Labor Code section 2699(1)(2), which provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Consistent with California Supreme Court precedent, PAGA settlements are not subject to the requirements of class certification (such as numerosity, typicality, adequacy, or commonality), and there is no preliminary/final two-step process as is required in class actions. (*See Arias*, *supra*, at pp. 975–976; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.)

For these reasons—and those discussed in more detail below—Plaintiffs respectfully request that the Court grant approval of the Settlement as fair, reasonable, and in the public interest.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant supplies architectural paint and exterior wood care products nationwide and across California, including interior paints, primers, wood stains, finishes, strippers, cleaners, floor coatings, sealers, and specialty paints. (Bokhour Decl. ¶ 13.)

Plaintiff David Avila was employed by Defendant as a non-exempt employee with the title of “Maintenance Mechanic” beginning on January 3, 2023, until his separation from employment on November 20, 2023. Plaintiff David Juarez was employed by Defendant as a non-exempt employee with

1 the tile of “Operator” beginning on approximately April 7, 2022, until his separation from employment
2 on November 21, 2023. (Bokhour Decl. ¶ 14.)

3 Plaintiffs, along with the PAGA Members, worked on the operational side of Defendant’s
4 business. Both Plaintiff Avila and Plaintiff Juarez worked for Defendant in Santa Ana, California.
5 Plaintiffs and the PAGA Members (including, but not limited to, Inventory Control Manager, Quality
6 Technician, Receiving Operator, Machine Operator, and all other non-exempt positions) were
7 responsible for all aspects of Defendant’s operations in California during the PAGA Period. (Bokhour
8 Decl. ¶ 15).

9 After retaining counsel, on December 8, 2023, Plaintiff Avila submitted his notice of purported
10 violations to the LWDA and commenced this Action against Defendant Behr Process Corporation (now
11 known as Behr Process LLC), alleging causes of action based on purported Labor Code violations.
12 Plaintiff Avila subsequently amended this Action by filing a Second Amended Complaint on March 20,
13 2025, to include the claims and parties alleged by Plaintiff Juarez in the related action entitled *David*
14 *Juarez v. Behr Process Corp.* then-pending in Orange County Superior Court, Case No. 30-2025-
15 01452707 (the “Juarez Action”). In conjunction therewith, Plaintiff Juarez dismissed the Juarez Action
16 without prejudice. Plaintiffs’ operative complaint alleges that Defendant is liable for civil penalties under
17 the PAGA based on various alleged Labor Code violations, including but not limited to failure to
18 accurately record all time worked, including time worked off the clock, failure to compensate employees
19 for all hours and overtime hours worked, failure to pay employees at the correct overtime rate, failure to
20 pay all required sick days at the legal rate of pay, failure to provide meal periods or pay meal period
21 premiums at the regular rate of pay, failure to provide rest periods or pay rest period premiums at the
22 regular rate of pay, failure to provide accurate itemized wage statements, failure to timely pay final wages
23 at termination, failure to reimburse for necessary business expenses, failure to pay all vested vacation
24 time, failure to properly elect and implement an alternative workweek schedule, failure to keep accurate
25 and complete time and pay records, failure to timely produce or make available personnel records and
26 payroll records, refusal to pay wages, unlawful deductions, requiring unlawful agreements and waivers,
27 and conducting unlawful inquiries into criminal history. (S.A. ¶ II.1; Bokhour Decl. ¶¶ 16-19, and Ex.
28 A.)

1 In advance of mediation, the Parties engaged in an informal exchange of relevant information,
2 data, and documents. Defendant produced policy documents and a sampling of time and payroll records,
3 which enabled Plaintiffs’ counsel to conduct a thorough analysis of liability exposure, identify
4 representative violations, and formulate damages and penalties models. (Bokhour Decl. ¶ 19). As part of
5 this informal discovery, Plaintiffs’ counsel analyzed issues including but not limited to, rounding
6 practices, meal and rest period violations, “regular rate of pay” miscalculations, expense reimbursements,
7 wage statement violations, and late payment penalties. Plaintiffs also reviewed applicable policies,
8 practices, and pay data to evaluate the risks and potential recovery at trial. (Bokhour Decl. ¶ 20.) (*See*
9 *also* Declaration of Joshua Falakassa in Support of Plaintiffs’ Motion for Approval of PAGA Settlement
10 (“Falakassa Decl.”))

11 Following these efforts, the Parties participated in a full-day mediation on January 8, 2025, before
12 Hon. Carl J. West (Ret.), a respected and experienced mediator of complex wage and hour class and
13 PAGA actions. With Judge West’s assistance, the Parties reached a negotiated resolution of the claims
14 asserted in this action. (S.A. ¶ II.2.; Bokhour Decl. ¶ 20.) The Parties thereafter memorialized the material
15 terms in a formal PAGA Settlement Agreement, which is now presented to the Court for review and
16 approval. (Bokhour Decl. ¶ 21, Ex. B.)

17 **III. THE PAGA AND ITS REQUIREMENTS**

18 The Private Attorneys General Act of 2004 (“PAGA”), codified at Labor Code § 2698 *et seq.*,
19 provides a mechanism for aggrieved employees to recover civil penalties on behalf of the State of
20 California for violations of the Labor Code committed by their employers. Before PAGA, the
21 enforcement of such civil penalties was vested exclusively in California's labor enforcement agencies.
22 (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.).

23 However, recognizing both the limited resources of enforcement agencies and the prevalence of
24 Labor Code violations, the California Legislature determined it was in the public interest to deputize
25 private individuals as “private attorneys general” to enforce the law. (*Id.*) As the Legislature explained:
26 “The only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil
27 penalties as provided in the Labor Code.” (Stats. 2003, ch. 906, § 1(b).) Labor Code § 90.5(a) reinforces
28 that California’s labor laws exist to prevent employees from being “required or permitted to work under

1 substandard unlawful conditions,” and protect compliant employers from unfair competition by those
2 who cut corners on labor standards. The Legislature further found that: Labor enforcement agencies had
3 insufficient staffing, unlikely to keep pace with growth in the labor market, and allowing private
4 enforcement through PAGA was a necessary supplement—while retaining agency primacy over
5 enforcement. (Stats. 2003, ch. 906, § 1(c).)

6 Under Labor Code § 2699(i), civil penalties recovered in a PAGA action are distributed: 75% to
7 the Labor and Workforce Development Agency (LWDA) for enforcement and education efforts, and
8 25% to the aggrieved employees.

9 Before bringing a PAGA action, the employee must satisfy notice and exhaustion requirements
10 under Labor Code § 2699.3(a) by submitting written notice to both the employer and the LWDA
11 identifying the specific Labor Code provisions allegedly violated. The LWDA may then investigate or
12 respond; if it declines to investigate or does not act within the statutory period, the aggrieved employee
13 may proceed. (*See* Lab. Code §§ 2699.3(a)(2), 2699(h).)

14 In this case, Plaintiff Avila submitted a timely PAGA Notice Letter on December 8, 2023, and a
15 Supplemental Notice on March 13, 2025, notifying the LWDA and Defendant of the alleged violations.
16 Similarly, Plaintiff Juarez (with respect to the Juarez Action) submitted a timely PAGA Notice Letter on
17 January 22, 2024, and a Supplemental Notice on March 13, 2025, notifying the LWDA and Defendant
18 of the alleged violations. With respect to both Plaintiffs’ notices, the LWDA did not intervene, thereby
19 authorizing Plaintiffs to proceed with this enforcement action on behalf of the State. (Bokhour Decl. ¶¶
20 16–18.) Thus, the entire recovery in this case—the \$560,000 PAGA Settlement—is the result of
21 enforcement efforts undertaken solely by Plaintiffs and their counsel. The LWDA was provided with
22 notice of the proposed Settlement Agreement and of this Motion, in accordance with Labor Code §
23 2699(1)(2). (Bokhour Decl. ¶ 41.)

24 PAGA also requires that any settlement of a PAGA claim brought by an aggrieved employee
25 must be approved by the Court. (*Ibid.*) In *Arias*, the California Supreme Court held that PAGA
26 representative actions are not subject to class certification requirements, nor is notice required for other
27 employees. (*Arias*, 46 Cal.4th at 975–76, 980–88.) The plaintiff is deemed to act as a proxy or agent of
28 California’s labor law enforcement agencies. (*Id.* at 986.)

Accordingly, the Court’s role is to review the terms of the PAGA Settlement to ensure they are fair, reasonable, and in the public interest—goals that this proposed Settlement fully satisfies, as discussed below.

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The following is a summary of the principal terms of the Settlement Agreement.

A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The Settlement provides that Defendant will pay a non-reversionary Gross Settlement Amount of \$560,000 (the “Gross Settlement Amount”) (S.A. ¶¶ I.10, III.2), which is inclusive of:

- Civil penalties payable to the Labor and Workforce Development Agency (“LWDA”) and the PAGA Members,
- Attorneys’ fees and costs, and
- Settlement administration expenses.

Following deductions of up to \$186,666.67 in attorneys’ fees, \$21,331.38 in actual litigation costs, \$4,000 in settlement administration fees, the remaining amount—approximately \$347,519.69—constitutes the “Net Settlement Amount.” (S.A. ¶¶ I.11, IV.5; Bokhour Decl. ¶ 27.).

Pursuant to Labor Code § 2699(i) and the terms of the Settlement:

- 75% of the Net Settlement Amount (*i.e.*, \$260,639.77) will be paid to the LWDA, to be used for labor law enforcement and education; and
- The remaining 25% (*i.e.*, \$86,879.92) will be distributed to the PAGA Members on a pro-rata basis based on the number of PAGA Pay Periods worked during the PAGA period. (*See* S.A. ¶¶ III.5, IV.5; Bokhour Decl. ¶ 27.)

This structure complies with the statutory distribution scheme and provides meaningful recovery to the State and to employees, without the possibility of reversion to Defendant. Uncashed settlement checks will escheat to the State of California Unclaimed Property Fund in accordance with California law. (S.A. ¶ IV.3.)

The following chart reflects the estimated payments from the Settlement Agreement:

	Amount
<i>Gross Settlement Amount</i>	\$560,000.00

PAGA Counsel Fees Payment	\$186,666.67
PAGA Counsel Litigation Expenses Payment	\$21,830.84
Administration Expenses Payment	\$4,000.00
<i>Net Settlement Amount</i>	<i>\$347,502.49</i>
75% to the LWDA	\$260,626.86
25% to PAGA Members	\$86,875.62

As such, the LWDA will receive approximately \$260,626.86 (75% of the Net Settlement Amount) and the PAGA Members will collectively receive approximately \$86,875.62 (25% of the Net Settlement Amount), which will be paid on a pro-rata basis according to the number of pay periods worked during the PAGA Period. The average payment to the PAGA Members is approximately \$173.76 (Bokhour Decl. ¶ 28).

Notably, Defendant represents that the PAGA Members worked approximately 21,723 pay periods during the PAGA Period. (S.A. ¶ III.10; Bokhour Decl. ¶ 42.) If the total number of pay periods worked by PAGA Members during the PAGA Period exceeds 21,723 by more than ten percent (10%), the Gross Settlement Amount shall be increased proportionally, but only for the percentage exceeding the ten percent (10%) threshold. (Id.) For example, if the total pay periods exceed 21,723 by eleven percent (11%), the Gross Settlement Amount will increase by one percent (1%). (Id.)

B. PAYMENT AND THE NOTICE

Defendant will fund the Gross Settlement Amount of \$560,000 to the Settlement Administrator within thirty (30) calendar days of the Effective Date. (S.A. ¶ III.2.) The Effective Date is defined as the date on which the Court enters an order approving the Settlement without material modification, either (a) the time to appeal or seek review of the Court’s approval has expired with no appeal or request for review having been filed, or (b) any appeal or request for review has been resolved in a manner that upholds the Court’s approval of the Settlement. (S.A. ¶ I.7.)

Within twenty-one (21) calendar days after the Effective Date, Defendant will provide the Settlement Administrator with the following information for the PAGA Members: (1) full name; (2) last known home address; (3) social security number; and (4) number of pay periods worked by each employee of Defendant in the State of California during the PAGA Period (“PAGA Members List”). The PAGA Members List shall be deemed confidential and may not be disclosed or used by the Settlement

1 Administrator for any purpose except to facilitate the PAGA Settlement. Upon receipt of the PAGA
2 Member List, the Settlement Administrator shall access the National Change of Address Database and
3 update the addresses contained therein. (S.A. ¶ IV.2.)

4 Within five (5) business days of receiving the PAGA Members' information from Defendant, the
5 Settlement Administrator will circulate for all Parties' counsel's approval an anonymized spreadsheet
6 containing the Individual Settlement Payments and that data used to calculate said payments. (S.A. ¶
7 IV.2.).

8 Within five (5) business days of receiving approval from all counsel for the Parties, the Settlement
9 Administrator will mail copies of the explanatory letter, which will be mutually approved by the parties,
10 along with the Individual Settlement Payments to all PAGA Members via First-Class U.S. Mail. (S.A. ¶
11 IV.3.)

12 Within ten (10) business days of receiving the Gross Settlement Amount from Defendant, the
13 Settlement Administrator will issue payments to:

- 14 • The LWDA (75% of the Net Settlement Amount),
- 15 • The Settlement Administrator (for administration costs), and
- 16 • Plaintiffs' counsel (approved attorneys' fees and costs).

17 (S.A. ¶¶ IV.5.)

18 Each PAGA Member will have ninety (90) days from the date of issuance to cash their settlement
19 checks. (S.A. ¶ IV.3.) If any checks remain uncashed after one-hundred twenty (120) days of mailing,
20 those funds will be voided and submitted to the California State Controller's Office – Unclaimed Property
21 Fund in the name of the respective PAGA Member. (S.A. ¶ IV.3.)

22 **C. SETTLEMENT ALLOCATION TO THE PAGA MEMBERS**

23 As set forth in the Settlement Agreement, twenty-five percent (25%) of the Net Settlement
24 Amount—or \$86,879.92—will be allocated to the PAGA Members. (S.A. ¶ IV.5.) According to the data
25 provided by Defendant for mediation, approximately 500 PAGA Members will share in this allocation
26 on a pro rata basis, based on the number of PAGA Pay Periods each individual worked during the PAGA
27 Period. (S.A. ¶ III.5.)

1 The PAGA Period is defined in the Settlement Agreement to cover the period beginning on
2 December 20, 2022 and ending March 9, 2025. (S.A. ¶ I.13).

3 The portion of each PAGA Members's share of the Net Settlement Amount will be treated as
4 non-wage income and, to the extent required by law, will be reported on an IRS Form 1099 by the
5 Settlement Administrator. (S.A. ¶ IV.3.)

6 **D. THE RELEASE**

7 The California Supreme Court has held that a judgment in "a representative action brought by an
8 aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only
9 on the named employee plaintiff but also on government agencies and any aggrieved employee not a
10 party to the proceeding." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985–986.)

11 Here, the release in the Settlement Agreement is narrowly tailored and binds only the LWDA, the
12 State of California, and the PAGA Members—and only as to PAGA civil penalty claims. The release is
13 triggered upon the Court's approval of the Settlement. (S.A. ¶ III.6.)

14 The relevant language provides:

15 6. PAGA Released Claims. In consideration for the payments awarded
16 pursuant to the terms of this Settlement, upon Court approval of the PAGA
17 Settlement, Plaintiffs and PAGA Members, on behalf of themselves and as
18 representatives of the state of California and its LWDA, will fully and
19 finally release and discharge Released Parties¹ from claims for penalties and
20 attorneys' fees and costs recoverable under PAGA which Plaintiffs, PAGA
21 Members, and/or the LWDA had, or may claim to have, against Released
22 Parties, arising out of the violations alleged or that could have been alleged
23 based on the facts alleged in the Avila and Juarez Actions or the PAGA
24 Notices by Plaintiffs, including but not limited to, PAGA Penalties for or
arising out of the following: failure to accurately record all time worked,
including time worked off the clock, failure to compensate employees for
all hours and overtime hours worked, failure to pay employees at the correct
overtime rate, failure to pay all required sick days at the legal rate of pay,

25 ¹ "Released Parties" means (a) Defendant; (b) Defendant's respective former and present parents (including Masco
26 Corporation), subsidiaries, affiliated corporations and entities, vendors, and independent contractors of the entity in
27 subparagraph (a); (c) the successors and predecessors of the entities identified in subparagraphs (a) and (b); and (d) each of
28 the respective current, former, and future officers, directors, members, managers, insurers, accountants, attorneys,
investment bankers, trusts, trustees, licensors, licensees, employees, consultants, vendors, payroll companies, staffing
agencies, independent contractors, clients, partners, shareholders, joint venturers, and third-party agents of any of the
entities identified in subparagraphs (a) through (c). (S.A. ¶ I.14.)

1 failure to provide meal periods or pay meal period premiums at the regular
2 rate of pay, failure to provide rest periods or pay rest period premiums at
3 the regular rate of pay, failure to provide accurate itemized wage statements,
4 failure to timely pay final wages at termination, failure to reimburse for
5 necessary business expenses, failure to pay all vested vacation time, failure
6 to properly elect and implement an alternative workweek schedule, failure
7 to keep accurate and complete time and pay records, failure to timely
8 produce or make available personnel records and payroll records, refusal to
9 pay wages, unlawful deductions, requiring unlawful agreements and
10 waivers, and conducting unlawful inquiries into criminal history, and
11 violations of Labor Code sections 201-203, 204, 208, 210, 216, 218.5, 223,
226, 226.3, 226.7, 227.3, 233, 234, 245-248.5, 256, 432, 432.5, 432.6,
432.7, 510, 511, 512, 516, 558, 559.1, 1194, 1194.2, 1197.1, 1198, 1198.5,
1199, 2698, et seq., and 2800-2804. This release shall apply to claims
arising during the PAGA Period and will be binding and effective upon
Plaintiffs, PAGA Members, and the LWDA regardless of whether the
PAGA Member cashes his or her settlement check. Released PAGA Claims
do not include any individual claims PAGA Members may have.

12 Given these parameters, the release is appropriately narrow and consistent with California law
13 governing representative PAGA actions and related to claims alleged and identified in the Plaintiffs'
14 PAGA Notice Letters. Accordingly, the Parties respectfully submit that the scope of the release is both
15 reasonable and enforceable.

16
17 **V. THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT**
18 **APPROVAL**

19 In 2016, the California Legislature amended PAGA to require that “[t]he superior court shall
20 review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code §
21 2699(1)(2).) The same provision requires that the proposed settlement be submitted to the Labor and
22 Workforce Development Agency at the same time it is submitted to the Court. Plaintiffs have complied
23 with this requirement. The Settlement Agreement and this Motion for Approval have been concurrently
24 submitted to the LWDA. (Bokhour Decl. ¶ 41, Ex. C.)

25 Beyond procedural compliance, courts must evaluate whether a proposed PAGA settlement is
26 fair, reasonable, and consistent with PAGA’s statutory purpose—namely, to deter Labor Code violations,
27 incentivize employer compliance, and serve the State’s interest in enforcing labor standards. (See *Arias*
28 v. Superior Court (2009) 46 Cal.4th 969, 980.) Courts have held that a PAGA settlement should be

1 approved where it represents a genuine and informed compromise, particularly when the parties have
2 participated in arm’s-length negotiations (such as mediation), exchanged relevant data or discovery, and
3 thoroughly evaluated liability, exposure, and litigation risks. (*See Moniz v. Adecco USA, Inc.* (2021) 72
4 Cal.App.5th 56, 76.)

5 Here, the Parties engaged in meaningful pre-settlement litigation efforts. They conducted
6 discovery and factual investigation through informal exchanges of Defendant’s policies and a sampling
7 of time and payroll records. Plaintiffs’ counsel reviewed this data and conducted an exposure analysis to
8 assess penalties and litigation risks. The Parties then participated in a full-day private mediation with
9 experienced wage and hour mediator Hon Carl J. West (Ret.) and reached a negotiated resolution only
10 after extensive analysis and good-faith negotiations. (Bokhour Decl. ¶¶ 19–20.)

11 The resulting non-reversionary \$560,000 settlement reflects a fair and reasonable compromise. It
12 accounts for Defendant’s asserted defenses as well as the challenges of proving liability and penalties,
13 and the Court’s discretion to reduce penalties under Labor Code § 2699(e)(2). Of the Net Settlement
14 Amount, \$260,639.77 will be paid to the LWDA and \$86,879.92 will be distributed to approximately
15 500 PAGA Members on a pro rata basis based on PAGA Pay Periods. Given the strength of Plaintiffs’
16 claims, the risks of further litigation, and the real and meaningful recovery for both the State and
17 employees, the proposed settlement is fair, adequate, reasonable, and in the public interest. Accordingly,
18 the Parties respectfully request that the Court grant approval.

19 **A. EVALUATION OF THE PAGA SETTLEMENT**

20 Although PAGA and its legislative history do not expressly require courts to evaluate settlements
21 against the theoretical “maximum value” of the claims, courts routinely assess whether the penalties
22 recovered are reasonable in light of the potential exposure and litigation risks. Here, even under that
23 framework, the penalties provided under the Settlement are fair and reasonable.

24 Plaintiffs estimate that Defendant’s maximum potential penalty exposure was approximately
25 \$2,172,300, based on approximately 21,723 PAGA Pay Periods and the statutory \$100 per-pay-period
26 penalty for a first violation. (Bokhour Decl. ¶ 29.) This figure is grounded in Plaintiffs’ core theories—
27 namely, unpaid minimum wages due to rounding, unpaid or underpaid overtime and sick pay due to
28 improper regular rate calculations, meal and rest break violations, and derivative penalties for inaccurate

1 wage statements, untimely wages, and untimely final wages.

2 Plaintiffs based this estimate on civil penalties available under Labor Code § 2699(f)(2), which
3 generally provides \$100 for an initial violation and \$200 for each subsequent violation, per aggrieved
4 employee, per pay period. Citing *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Plaintiffs asserted
5 that Defendant’s notice of the alleged violations through the PAGA notice letters justified applying at
6 least the \$100 rate for each pay period after the notice was served. However, Plaintiffs acknowledges that
7 some courts have held that the \$200 “subsequent violation” rate applies only after an employer has been
8 put on notice of a violation by a court or commission, not merely by the PAGA letter. (See, e.g.,
9 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.*, 2009 U.S. Dist. LEXIS 69842, *26
10 (C.D. Cal.)) Defendant maintains that the higher \$200 rate does not apply and that only the \$100 rate is
11 available.

12 However, this maximum amount does not take into account the various risks and potential
13 defenses to the claims herein. Moreover, Defendant disputes liability altogether and argue that, even if
14 violations occurred, the Court has discretion under Labor Code § 2699(e)(2) to significantly reduce any
15 penalties “based on the facts and circumstances of the particular case,” including where an award might
16 otherwise be “unjust, arbitrary and oppressive, or confiscatory.” Defendant further asserts that any
17 violations were unintentional, isolated, or de minimis and that any penalties should be mitigated due to
18 the absence of “willfulness” or based on their good-faith compliance efforts. They also argue that stacking
19 penalties for multiple derivative violations (e.g., wage statements and final pay) would be improper and
20 excessive.

21 Despite these defenses and the litigation risks, Plaintiffs secured a \$560,000 settlement—
22 representing approximately 26% of the total maximum exposure. This result reflects a meaningful
23 compromise following a thorough and extensive investigation, discovery, and private mediation.
24 Plaintiffs’ counsel analyzed time and pay data, reviewed Defendant’s policies and procedures, and
25 modeled potential penalty outcomes using the data provided for approximately 500 PAGA Members.
26 (Bokhour Decl. ¶¶ 24-26, 32.)

27 The agreed-upon penalty fund ensures meaningful recovery to the State and affected employees
28 while avoiding the uncertainty and cost of further litigation. It advances the goals of PAGA and is neither

1 unjust, arbitrary, nor excessive. Accordingly, the Settlement is a fair and reasonable resolution of the
2 disputed claims and warrants the Court's approval. (Id.)

3 **B. CLAIM BY CLAIM ANALYSIS**

4 Based on informal discovery and pre-mediation exchanges, Plaintiffs estimate approximately
5 500 Aggrieved Employees worked 21,723 PAGA Pay Periods and approximately 188,443 shifts during
6 the relevant PAGA period.

7 **Failure to Pay All Minimum and Overtime Wages**

8 Plaintiffs' counsel identified two claims relating to the alleged failure to pay all minimum and
9 overtime wages, which were initially viewed as central to Plaintiffs' theory of liability. These included
10 (1) unpaid off-the-clock work and (2) improper "regular rate of pay" calculations.

11 With respect to off-the-clock work, Plaintiffs alleged that Defendant failed to accurately record
12 and compensate Aggrieved Employees for all hours worked, particularly time spent working
13 immediately before and after their scheduled shifts. Plaintiffs contended that this uncompensated time,
14 although sometimes limited to short increments, nevertheless constituted compensable work under
15 California law. The allegation focused on a purported practice by which employees routinely performed
16 pre-shift or post-shift duties — such as preparing materials, logging into systems, or completing end-
17 of-day tasks — without corresponding compensation.

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19 Defendant, however, strongly disputed this claim, asserting that employees recorded their own
20 time entries with minute-level precision, and that the payroll system was designed to capture all time
21 worked. In support of this defense, Defendant produced sampling data and time records during informal
22 discovery showing consistent and complete employee self-reporting. Defendant also argued that its
23 written policies did not permit off the clock work and that this claim would require intensely
24 individualized assessments to determine whether and when each employee allegedly worked off-the-
25 clock, and if so, whether such work was de minimis or properly compensated in other ways. Although
26 courts evaluating PAGA claims are not bound by Rule 23 manageability standards, Defendant's
27 arguments would still affect the likely recoverable penalty amounts, the feasibility of proof, and the
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1 scope of any prevailing claim. Based on these considerations, and after analyzing the available
2 evidence, Plaintiffs recognized that they were unlikely to prevail on this theory at trial.

3 Plaintiffs also alleged that Defendant failed to include certain non-discretionary incentive
4 payments in calculating the “regular rate of pay” for overtime and sick leave compensation. Under
5 California law, employers must include all forms of non-discretionary compensation when calculating
6 the regular rate used to pay overtime, and this requirement has been confirmed by the California
7 Supreme Court in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Plaintiffs contended
8 that Defendant failed to account for such bonuses and incentive payments, resulting in underpayment
9 of overtime wages.

10 Defendant again disputed the claim. It asserted that all overtime and premium pay were
11 calculated in accordance with the “regular rate of pay” as required by law, and it produced pay records
12 during informal discovery reflecting minimal or no variance between the paid and purportedly owed
13 amounts. Defendant maintained that any deviations, if they occurred at all, were minor and non-
14 systemic. In addition, there was uncertainty as to whether the incentive payments at issue would legally
15 qualify as “non-discretionary,” and thus subject to inclusion in the regular rate. Given these evidentiary
16 and legal hurdles, and particularly the fact that any underpayments appeared to be de minimis, Plaintiffs
17 determined that this claim carried minimal value for purposes of PAGA penalties.

18 Accordingly, although Plaintiffs initially identified these unpaid wage claims as potentially
19 significant, further factual development and review of Defendant’s records during informal discovery
20 revealed substantial weaknesses. These weaknesses included documentary evidence refuting the
21 allegations, legal and practical challenges in proving a widespread and consistent practice across the
22 Aggrieved Employee group, and the low monetary impact of any potential violations. As a result,
23 Plaintiffs assigned no independent settlement value to these two wage claims. However, because the
24 same factual theories underpinned Plaintiffs’ derivative claims under Labor Code sections 203 (waiting
25 time penalties) and 226 (wage statement violations), these unpaid wage allegations remained a
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1 meaningful component of Plaintiffs' overall case theory and were considered in determining an
2 appropriate global PAGA penalty exposure.

3 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

4 Plaintiffs also alleged that Defendant failed to consistently provide compliant meal periods or
5 to compensate Aggrieved Employees with a premium payment in lieu thereof. During the PAGA
6 Period, Settlement Aggrieved Employees worked an estimated 188,443 shifts, and based on data
7 produced during informal discovery, there were approximately 11,885 meal period violations affecting
8 6,068 pay periods. Applying the default PAGA penalty of \$100 per initial pay period violation,
9 Plaintiffs calculated Defendant's maximum theoretical exposure under this claim at \$606,800.

10 However, Defendant disputed both liability and penalty exposure. First, it contended that it
11 maintained meal period policies and procedures that fully complied with California law during the
12 relevant period. In support of this defense, Defendant produced employee handbooks and policy
13 documents which expressly directed employees to take timely meal periods and provided procedures
14 for doing so. Moreover, Defendant's timekeeping data showed that in most shifts, employees recorded
15 meal periods that were timely and compliant.

16 Defendant further asserted that the relatively small percentage of shifts reflecting non-
17 compliance was not the result of a uniform policy or systemic failure, but rather reflected individualized
18 and voluntary choices by employees, or isolated instances of non-compliance not attributable to the
19 employer's conduct. Relying on this position, Defendant argued that even if meal period violations
20 occurred, they did not arise from a practice or policy that would subject it to widespread PAGA
21 penalties. Importantly, Defendant maintained that this claim would face serious challenges under a
22 PAGA framework, particularly due to the doctrine of substantial compliance, which permits courts to
23 reduce or withhold penalties where the employer made good faith efforts to comply with the Labor
24 Code. (See *Lab. Code* § 2699(e)(2); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204
25 [noting the court's discretion to reduce penalties if deemed excessive or unjust].) Given the high level
26 of compliance evidenced by the data and the presence of documented meal period policies, Plaintiffs
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1 acknowledged that even if liability were found, the Court would likely exercise its discretion to reduce
2 or significantly limit any PAGA penalties, finding that Defendant substantially complied with its
3 statutory obligations.

4 Additionally, Defendant argued that any evaluation of liability would require a highly
5 individualized inquiry into why a particular employee did not take a compliant meal period, which
6 would undermine Plaintiffs' ability to establish widespread liability for civil penalties under PAGA.
7 Defendant cited *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25, for the proposition
8 that class treatment — and by analogy, aggregate PAGA penalty assessments — is not appropriate
9 where individual issues predominate.

10 Taking into account the limited scope of the alleged violations, Defendant's supporting
11 evidence, and the likelihood that the Court would either reject penalties altogether or substantially
12 reduce them, Plaintiffs discounted Defendant's maximum exposure by 50%, resulting in a revised
13 estimated value of \$303,400 for purposes of settlement.

14 Plaintiffs submit that this valuation reasonably reflects the balance between the theoretical
15 exposure and the actual litigation risk, including Defendant's arguments on the merits, the strength of
16 its policy documentation, and the high probability that any penalties assessed would be materially
17 reduced under section 2699(e)(2). The negotiated amount, therefore, represents a fair and adequate
18 compromise that serves PAGA's objectives of deterring future violations while also accounting for the
19 real-world strengths of Defendant's defenses.

20 **Failure to Provide Rest Breaks or Compensation in Lieu Thereof**

21 Plaintiffs further alleged that Defendant failed to authorize and permit legally compliant rest
22 periods throughout the PAGA Period, in violation of Labor Code § 226.7. Specifically, Plaintiffs
23 asserted that Defendant did not maintain a formal rest period policy and, in practice, failed to ensure
24 that Settlement Aggrieved Employees were relieved of all duties during their breaks. Plaintiffs also
25 alleged that employees were effectively prohibited from leaving the premises during rest breaks, and
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1 that for shifts exceeding 10.5 hours, Defendant failed to authorize or permit a third rest period as
2 required by law.

3 According to the data produced by Defendant during informal discovery, there were
4 approximately 187,508 rest period-eligible shifts worked during the PAGA period. Based on the
5 absence of a formalized rest period policy and evidence of practice-level deficiencies, Plaintiffs
6 conservatively assumed a 33% violation rate, resulting in an estimated 22,591 affected pay periods.
7 Applying the statutory penalty of \$100 per initial pay period violation, the maximum theoretical
8 exposure for this claim was calculated at \$2,259,100. However, to avoid impermissible “stacking” of
9 penalties — which courts disfavor when assessing multiple violations within the same pay period —
10 Plaintiffs reasonably capped the claim’s exposure at \$675,000, aligning the penalty estimate with
11 unique pay periods rather than aggregate shifts. (Id.)

12 Defendant, however, produced evidence that it maintained compliant rest period practices and
13 consistently authorized and permitted rest periods throughout the relevant time frame. It argued that the
14 absence of a stand-alone rest period policy did not equate to noncompliance, particularly where
15 operational practices supported the provision of rest periods. Defendant further asserted that the mere
16 inability to leave the premises during breaks did not constitute a violation under California law, and
17 that employees were never prevented from taking uninterrupted rest periods. Additionally, Defendant
18 contended that any failures to take rest breaks were individualized and voluntary, not the result of a
19 systemic or uniform policy, and that evaluating liability would require fact-specific inquiries into each
20 employee’s experience on a shift-by-shift basis. These arguments, if accepted, would substantially
21 reduce or eliminate any recovery under PAGA.
22

23 Significantly, Defendant invoked the Court’s discretion under Labor Code § 2699(e)(2), which
24 permits a reduction or elimination of PAGA penalties where the employer has demonstrated substantial
25 compliance with its obligations. The available data and anecdotal evidence reflected a high degree of
26 compliance, and Plaintiffs acknowledged that, even if technical violations were found, the Court would
27 likely exercise its discretion to significantly reduce or altogether deny penalties under this claim.
28

1 Given these factors, Plaintiffs applied a 90% discount to the theoretical maximum exposure.
2 This discount reflects not only the substantial litigation risk posed by Defendant's merits-based
3 defenses, but also the strong probability that the Court would reduce or reject penalties based on
4 substantial compliance, individual variability, and the judicial preference against stacking multiple
5 PAGA penalties within the same pay period. As a result, Plaintiffs arrived at a reduced settlement
6 valuation of \$67,500 for this claim.

7 Plaintiffs submit that this valuation reasonably reflects the relative weakness of the rest period
8 claim in light of Defendant's policy documentation, time records, and practical operations, and aligns
9 with the judicial requirement that PAGA settlements be fair, reasonable, and adequate, particularly
10 when substantial compliance has been demonstrated.

11 **Waiting Time Penalties**

12 Plaintiffs also sought civil penalties under PAGA based on alleged violations of Labor Code §§
13 201–203, arising from Defendant's failure to timely pay all wages due at the time of separation.
14 Specifically, Plaintiffs alleged that Defendant failed to pay all earned wages upon termination or
15 resignation — including unpaid overtime and off-the-clock wages — for a subset of Settlement
16 Aggrieved Employees. (Bokhour Decl. ¶ 33.)

17 Informal discovery confirmed that approximately 117 Settlement Aggrieved Employees
18 separated from their employment with Defendant during the relevant PAGA period. As such, the
19 applicable PAGA penalty for this claim — calculated at \$100 per aggrieved employee for the initial
20 violation — is \$11,700. (Id.) Plaintiffs do not seek to recover traditional waiting time penalties under
21 Labor Code § 203 (i.e., daily wages for up to 30 days), as those remedies are not available in a PAGA-
22 only action. Instead, Plaintiffs seek civil penalties strictly pursuant to Labor Code § 2699(f).
23

24 Defendant raised several defenses that would substantially limit or eliminate any recovery under
25 this theory. First, Defendant argued that any alleged failure to pay final wages in full was not willful,
26 but rather the result of a good faith belief that all wages had been properly calculated and paid based
27 on the employees' self-reported time entries. The presence of a good faith dispute would bar liability
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1 under Labor Code § 203, which requires willfulness as a predicate for the penalty. Defendant also
2 asserted that even if minor wage discrepancies existed, they were not sufficient to support a finding of
3 willfulness, and therefore no predicate violation of section 203 existed for which a civil penalty could
4 be imposed under PAGA.

5 Moreover, Defendant argued that to the extent Plaintiffs' claim was premised on derivative
6 violations — including failure to pay meal or rest premiums — such amounts do not qualify as “wages”
7 for the purpose of waiting time penalties. This position is supported by recent authority holding that
8 unpaid premium pay does not constitute wages unless and until such premiums are adjudicated or
9 otherwise determined to be owed. (*See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th
10 93, 117.)

11 Given these defenses and the relatively limited number of affected employees, Plaintiffs
12 recognized that the value of this claim was modest in a PAGA-only context. Nevertheless, Plaintiffs
13 included this violation in their overall assessment of penalty exposure and submit that the \$11,700
14 penalty allocation fairly reflects the limited scope of the claim and the real-world litigation risks
15 associated with Defendant's defenses. The penalty amount also aligns with the statutory framework
16 and purpose of PAGA, which allows the imposition of civil penalties in the public interest while also
17 granting courts discretion to weigh the circumstances of the employer's conduct.

18
19 **Failure to Provide Accurate Itemized Wage Statements**

20 Plaintiffs further alleged that Defendant failed to furnish accurate and complete wage statements
21 to Settlement Aggrieved Employees in violation of Labor Code § 226(a). Specifically, Plaintiffs
22 contended that Defendant's wage statements failed to reflect all hours worked and all wages earned,
23 due to allegedly unpaid off-the-clock time and miscalculated overtime rates stemming from the
24 exclusion of non-discretionary bonuses. In addition, to the extent meal and rest period premiums were
25 not paid or underpaid, Plaintiffs alleged that the corresponding wage statements were inaccurate.

26 According to data produced during informal discovery, Settlement Aggrieved Employees
27 worked approximately 21,723 pay periods during the PAGA period. Plaintiffs used this figure as the
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1 basis for estimating potential civil penalties under PAGA for wage statement violations. Although
2 Labor Code § 2699(f) permits penalties of \$100 for the initial pay period violation and \$200 for each
3 subsequent violation, Plaintiffs acknowledged that stacking of penalties across multiple violations
4 within the same pay period is disfavored by the courts. As such, Plaintiffs conservatively based their
5 penalty analysis on a single violation per pay period, yielding a maximum theoretical penalty exposure
6 of \$2,172,300.

7 Defendant, however, raised multiple defenses that significantly reduced the value of this claim.
8 First, it contended that any alleged wage statement violations were purely derivative of Plaintiffs'
9 claims for unpaid overtime, off-the-clock work, and meal/rest premium pay — all of which were
10 themselves weakly supported or heavily disputed. Defendant maintained that if it prevailed on the
11 underlying wage claims, no liability would attach under section 226. Second, Defendant asserted that
12 any technical deficiencies in the wage statements did not result in “injury” to the employees, nor were
13 they knowing and intentional, as required to impose statutory penalties under section 226(e).
14 Representative wage statements reviewed during informal discovery generally itemized all hours
15 worked, applicable pay rates, gross wages, and deductions.

16
17 Finally, Defendant argued that even if technical errors existed, its wage statement practices
18 constituted substantial compliance under Labor Code § 2699(e)(2). The evidence suggested that any
19 inaccuracies were isolated or inadvertent, rather than the result of a knowing failure to comply with the
20 law. In light of these defenses, and in recognition of the derivative nature of this claim, Plaintiffs
21 concluded that the risk of little to no recovery was substantial.

22 Accordingly, Plaintiffs applied an 80% discount to the maximum theoretical exposure of
23 \$2,172,300.

24 The resulting discounted value of \$434,460 was factored into Plaintiffs' overall settlement
25 analysis and penalty allocation. Plaintiffs submit that this valuation is fair and adequate in light of the
26 evidence produced during informal discovery, the risks associated with establishing derivative liability,
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1 and the likelihood that the Court would exercise its discretion to significantly reduce or eliminate
2 penalties based on substantial compliance and the absence of intentional misconduct.

3 In sum, when factoring in defenses and risks of ongoing litigation, Plaintiffs estimates the risk-
4 adjusted penalty recovery as follows:

5	• Unpaid Wages:	\$0 (discounted)
6	• Meal Period Claims:	\$303,400
7	• Rest Period Claims:	\$67,500
8	• Labor Code §§ 201 – 203 Claims:	\$11,700
9	• Wage Statement Violation Claims:	\$434,460
10	• <u>Total Risk-Adjusted Penalties:</u>	\$817,060

11 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND**
12 **REASONABLE**

13 For their efforts and the risk, they undertook in obtaining a common fund settlement that benefits
14 the LWDA and PAGA Members, the Parties allocated \$186,666.67 to Plaintiffs' Counsel for reasonable
15 attorneys' fees, which is one-third of the Gross Settlement Amount. Additionally, the Parties agreed to
16 reimburse Plaintiffs' Counsel for its actual litigation costs. (S.A. ¶ III.4.) These fees are warranted under
17 the law and are within the range of fees commonly awarded in similar cases.

18 **A. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS' FEES UNDER THE**
19 **COMMON FUND DOCTRINE IN THIS QUI TAM ACTION**

20 PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and
21 costs under section 2699(g)(1) of the California Labor Code, which provides that, "Any employee who
22 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any
23 filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of
24 paragraph (1) of subdivision (c) of Section 2699.3." As discussed below, in a qui tam action, reasonable
25 attorney's fees and costs are typically awarded under the common fund doctrine where, as here, the
26 litigation creates a common fund of money in a specific amount for the benefit of others.
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1 “A qui tam action is one brought under a statute that allows a private person to sue as a private
2 attorney general to recover damages or penalties, all or part of which will be paid to the government.”
3 *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. “A qui tam
4 action ‘is a type of private attorney general lawsuit’ (citation), in which ‘the qui tam Plaintiffs stands in
5 the shoes of the state or political subdivision (citation).’” *Id.* at 501. As the name of the PAGA statute
6 makes clear (e.g., “Labor Code Private Attorneys General Act”), a PAGA action is a qui tam action
7 because the statute allows the employee plaintiff, acting as the proxy of the state’s labor law enforcement
8 agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise
9 would have been assessed and collected by the LWDA. *Iskanian*, 59 Cal.4th at 380. “A PAGA
10 representative action is therefore a type of *qui tam* action.” *Id.* at 382. Indeed, the majority of the civil
11 penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved
12 employees (e.g., 75% paid to the state; 25% paid to the aggrieved employees). See Labor Code § 2699(i).

13 As here, where a common fund is created in a qui tam action by the successful litigation of a
14 plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common fund. *Bank*
15 *of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, California taxpayers
16 compelled the State Controller to enforce the Unclaimed Property Law against banks who were retaining
17 accounts that should have been turned over to the State. Because of the success of the taxpayers’ lawsuit,
18 a common fund was created in favor of some depositors and the State of California. *Id.* When the
19 taxpayers’ attorneys sought recovery of their attorney’s fees from the judgment under the common fund
20 doctrine, the Controller opposed the request. The Court of Appeal affirmed the trial court’s fee award to
21 the taxpayers’ counsel under the common fund doctrine stating:

22 “Those benefiting from the recovery of the fund, in this case some depositors
23 and eventually the People of the State of California, must bear their share of the
24 cost of litigation. Fees for taxpayers’ attorneys will be deducted from the
25 judgment, and each claimant’s share reduced proportionately. To the extent the
26 judgment relies upon section 1021.5 for recovery of attorney fees, it must be
27 modified to confine the award of fees to the common fund theory.” *Id.* at p. 91.

28 In this case, the PAGA Settlement created a common fund for the benefit of the PAGA Members
and the State of California. Thus, these beneficiaries must bear their share of the costs and attorneys’
fees, which fees and costs must be deducted from the settlement amount under the common fund theory.

1 *Id.* Moreover, such fees are deducted as a percentage of the settlement amount. *Boeing Co. v. Van*
2 *Gemert* (1980) 444 U.S. 472, 478-482; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir.
3 1990) 904 F.2d 1301, 1311; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026,
4 1027; *Staton v. Boeing Co.*(9th Cir. 2003) 327 F.3d 938, 967.

5 The California Supreme Court upheld the use of the common fund theory of recovery for
6 attorneys' fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement
7 created a common fund of \$19 million dollars. This ruling is consistent with the Court's prior rulings
8 recognizing that "when a number of persons are entitled in common to a specific fund, and an action
9 brought by ... Plaintiffs for the benefit of all results in the creation or preservation of that fund, such ...
10 Plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34;
11 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ["(A) lawyer who recovers a common fund . . . is
12 entitled to reasonable attorneys' fees from the fund as a whole"]; *Mills v. Electric Auto-Lite Co.* (1970)
13 396 U.S. 375, 393-394 [discussing the acceptance of awarding attorneys' fees and expenses from a
14 settlement where "litigation has conferred a substantial benefit on the members of an ascertainable
15 class"]; see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 ["(f)ee spreading
16 occurs when a settlement or adjudication results in the establishment of a separate or so-called common
17 fund for the benefit of the class."].)

18 Accordingly, the common fund doctrine allows a court to award attorneys' fees based upon a
19 percentage of the total fund that is created for the satisfaction of beneficiaries' claims when the fund
20 consists of a "certain or easily calculable sum of money." *Dunk v. Ford Motor, Co.* (1996) 48
21 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 1,282.91 [application of
22 the percentage of the fund recovery depended on "(t)he critical point" that "a fund was created from
23 which attorneys' fees could be paid"]; A. Conte & H. Newberg, *Newberg on Class Actions*, § 14:6 (4th
24 ed. 2002).

25 California law has long upheld, and continues to uphold, the percentage of the recovery method
26 for awarding attorneys' fees where a fund is established. See e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25,
27 34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez v. Netflix, Inc.* (2008)
28 162 Cal.App.4th 43, 563 ["fees based on a percentage of the benefits are in fact appropriate in large class

actions...”]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261, 263 [affirming award of attorneys’ fee based on percentage of recovery]; *Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th at pp. 65-66; see also *Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [“courts recognize two methods for calculating attorney fees in class actions: the lodestar/multiplier method and the percentage of recovery”].

Based on the foregoing, awarding attorneys’ fees of one-third of the Gross Settlement Amount is fair and warranted in light of the PAGA Settlement that was reached on behalf of the State of California and PAGA Members. Accordingly, awarding fees on this basis in this amount is reasonable and appropriate.

B. THE PERCENTAGE FEE OF THE GROSS SETTLEMENT AMOUNT IS FAIR AND REASONABLE

An award of fees from the Gross Settlement Amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of Plaintiffs’ counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: “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.).

Among the factors considered in determining whether the requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of Plaintiffs’ counsel and the quality of work performed by Plaintiffs’ counsel; (4) the contingent nature of the fee and the financial burden carried by the Plaintiff; and (5) awards made in similar cases. *Vizcaino v. Microsoft*

1 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an award here of one-third of the
2 common fund.

3 First, Plaintiffs' counsel achieved a superb PAGA Settlement in a case that involved highly
4 contested issues that were primarily related to small, alleged underpayments, as well as limited meal and
5 rest break violation rates.

6 Second, Plaintiffs faced significant risks going forward with the litigation. As discussed above,
7 Defendant raised various defenses and, as such, Plaintiffs faced risky issues going forward with this
8 litigation, and it would have taken significant time to realize any recovery in this action.

9 Third, Plaintiffs' counsel are experienced representative PAGA action litigators, including having
10 been selected as a "Super Lawyer" in employment litigation and having achieved large PAGA awards in
11 the State of California (Bokhour Decl. ¶¶ 3-8). This experience and expertise, combined with the high
12 quality of work performed by Plaintiffs' Counsel, resulted in the settlement achieved in this case.

13 Fourth, as discussed above and as set forth in the Declaration of Plaintiffs' counsel, the request
14 for attorneys' fees falls well within the norms accepted by state and federal courts in California in
15 comparable wage and hour actions actually handled by Plaintiffs' counsel.

16 For all of the above reasons, a fee award of one-third of the Gross Settlement Amount is fair and
17 reasonable.

18 **C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE AWARD**

19 Despite recognized limitations of the lodestar method, California and federal courts often find it
20 useful as a "cross-check" on the reasonableness of percentage-based attorneys' fee requests.² *Lealao*,
21 *supra*, 82 Cal.App.4th at 46-47. Under this approach, the court calculates counsel's total lodestar by
22 multiplying the hours reasonably expended by each attorney or legal staff member by their respective
23 hourly rates. The resulting figure may then be adjusted using a multiplier based on factors such as the
24 novelty or difficulty of the issues, the contingency risk, and the results achieved. (*See PLCM Group, Inc.*
25 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322;

26
27 ² In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of
28 manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been
expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *see also In re Activision* (N.D. Cal 1989) 723
F.Supp 1373.

1 *Lealao*, supra, at 43.)

2 Here, Plaintiffs' counsel requests fees in the amount of \$186,666.67—representing one-third of
3 the Gross Settlement Amount. As set forth in the declarations of Plaintiffs' counsel submitted herewith,
4 this fee represents a slight 1.33 multiplier when cross-checked against their actual lodestar, which totals
5 \$139,613.75. The table below summarizes the lodestar calculation:

6 **Lodestar Summary**

Mehrdad Bokhour	13 years	\$650	65.2	\$42,347.50
Joshua Falakassa	12 years	\$675	45.6	\$30,746.25
Kane Moon	18 years	\$950	22.4	\$21,280
Allen Feghali	11 years	\$900	15.5	\$13,950
Julie Sohyun Oh	4 years	\$700	44.7	\$31,290
TOTAL				\$139,613.75

13
14 The requested fee of \$186,666.67 represents a lodestar multiplier of approximately 1.33. This is
15 well within the range routinely approved by California courts, particularly in wage and hour litigation
16 involving significant litigation risk, meaningful relief, and substantial investment of attorney time. The
17 requested fee is thus reasonable and appropriate under both the percentage-of-recovery method and the
18 lodestar cross-check.

19 The hourly rates requested by Plaintiffs' counsel are consistent with rates approved by California
20 courts for attorneys of similar skill, experience, and reputation in complex wage-and-hour matters. The
21 starting point for determining a reasonable hourly rate is the prevailing market rate in the relevant legal
22 community. (*See PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Chavez v. City of Los*
23 *Angeles* (2010) 47 Cal.4th 970, 985.)

24 Given that Mr. Bokhour (13 years) requests \$650 per hour and Mr. Falakassa (12 years) requests
25 \$675 per hour, their rates fall squarely within this approved and prevailing range for experienced counsel
26 handling complex representative employment matters in California.

1 Thus, the hourly rates used in Plaintiffs' lodestar calculation are well-supported by recent
2 authority, and further confirm that the requested attorneys' fees are fair, reasonable, and consistent with
3 market standards.

4 **D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

5 Plaintiffs' Counsel respectfully requests reimbursement of their actual out-of-pocket litigation
6 expenses incurred in prosecuting this action. These costs were both reasonable and necessary to the
7 effective representation of Plaintiffs and the PAGA Members. Courts routinely allow prevailing plaintiffs
8 to recover such costs under the common fund doctrine, which applies equally to representative PAGA
9 actions. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 35 [common fund doctrine permits recovery of fees
10 and costs from the fund]; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 [litigation
11 costs may be recovered for the same reasons supporting a fee award].)

12 Additionally, courts recognize that counsel is entitled to recover "those out-of-pocket expenses
13 that would normally be charged to a fee-paying client." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16,
14 19.) Such reimbursable expenses may include filing fees, mediation costs, court reporting, research, and
15 related case administration expenses.

16 Here, the Settlement Agreement authorizes recovery of actual litigation costs incurred in
17 prosecuting the Actions. (S.A. ¶ III.4.a.) Plaintiffs' Counsel seeks reimbursement of \$21,331.38, which
18 reflects their actual costs through the anticipated approval hearing. (Bokhour Decl. ¶ 38.) These costs are
19 modest in relation to the size and complexity of the case and are uncontested by Defendant.

20 Because the requested costs are well-documented, reasonably incurred, and fall below the cap set
21 by the Settlement, Plaintiffs respectfully request that the Court approve reimbursement in the amount of
22 \$21,331.38.

23 **VII. SUBMISSION TO THE LWDA**

24 As required by Labor Code § 2699(1)(2), Plaintiffs have concurrently submitted the Settlement
25 Agreement and this Motion for Approval to the California Labor and Workforce Development Agency
26 (LWDA). (Bokhour Decl. ¶ 41.) Proof of the electronic submission to the LWDA is attached as Exhibit
27 C to the Bokhour Declaration.
28

1 **VIII. THE SETTLEMENT ADMINISTRATOR**

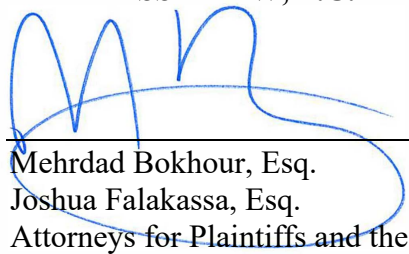
2 Simpluris, Inc. (“Simpluris”) has been selected to serve as the Settlement Administrator.
3 Simpluris will be responsible for issuing settlement payments, providing notice to PAGA Members,
4 handling tax reporting, and performing other standard administrative functions related to the Settlement.
5 Simpluris submitted an all-inclusive bid to administer the Settlement for \$4,000, which will be paid from
6 the Gross Settlement Amount. (S.A. ¶ III.4.b).

7 **IX. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request—without opposition from Defendant—
9 that the Court grant approval of the Parties’ PAGA Settlement Agreement pursuant to Labor Code §
10 2699(1)(2). The Settlement is fair, adequate, and reasonable, and it advances the enforcement goals of the
11 PAGA by providing meaningful relief to the State of California and the PAGA Members.

12 Dated: August 18, 2025

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