

Jonathan M. Genish (State Bar No. 259031)
Barbara DuVan-Clarke (State Bar No. 259268)
BDC@blackstonepc.com
Danielle GruppChang (State Bar No. 313881)
dgruppchang@blackstonepc.com
P.J. Van Ert (State Bar No. 234858)
pjvanert@blackstonepc.com
Annabel Blanchard (State Bar No. 258135)
ablanchard@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff, Alex Javier Nakamoto

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ALEX JAVIER NAKAMOTO, individually,
and on behalf of Aggrieved Employees
pursuant to the California Private Attorneys
General Act,

Plaintiffs,

vs.

SKYDIO, INC.; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 24CV062913

Honorable Sarah Sandford-Smith
Department 17

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
AWARD OF ATTORNEYS' FEES AND
COSTS, SERVICE AWARD, AND
SETTLEMENT ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: February 27, 2025
Time: 3:00 p.m.
Dept.: 17
Reservation ID: 762581044913

Complaint Filed: February 6, 2024
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE THAT** on February 27, 2025 at 3:00 p.m. in Department 17 of
3 the above-captioned Court located at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland,
4 California 94612 Plaintiff (“Plaintiff”) will and hereby does move the Court for an Order granting
5 approval of California Labor Code Private Attorneys General Act of 2004, California Labor Code
6 sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff requests that the Court enter an
7 Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the PAGA
9 Settlement Agreement (“Settlement” or “Settlement Agreement”) attached as **Exhibit 2**
10 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval
11 of PAGA Settlement and Award of Attorney’s Fees and Costs, Service Award, and
12 Settlement Administration Costs (“Genish Decl.”);
- 13 2. Directing the distribution of the Gross Settlement Amount of Two Hundred Thousand
14 Dollars and Zero Cents (\$200,000.00) pursuant to the terms of the Settlement;
- 15 3. Approving the PAGA Penalties, estimated to be One Hundred Four Thousand Three
16 Hundred Thirty-Two Dollars and Thirty-Four Cents (\$104,332.34), of which seventy-
17 five percent (75%) will be distributed to the California Labor and Workforce
18 Development Agency (“LWDA”) and twenty-five percent (25%) will be distributed to
19 the Aggrieved Employees;
- 20 4. Approving an award of reasonable attorneys’ fees of Seventy Thousand Dollars and Zero
21 Cents (\$70,000.00) to PAGA Counsel, Blackstone Law, APC;
- 22 5. Approving the amount of Fifteen Thousand Six Hundred Sixty-Seven Dollars and Sixty-
23 Six Cents (\$15,667.66) to PAGA Counsel, Blackstone Law, APC, for reimbursement of
24 actual litigation costs and expenses pursuant to California Labor Code section
25 2699(g)(1);
- 26 6. Approving the award of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff
27 as a Service Award;
- 28 7. Appointing Apex (“Apex” or “Administrator”) as the Administrator; and

8. Approving an award of up to Five Thousand Dollars and Zero Cents (\$5,000.00) in anticipated costs to Apex for its settlement administration services.

Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission through its public portal concurrently with the filing of this Motion. (Genish Decl., ¶ 16).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of PAGA Counsel Jonathan M. Genish and Plaintiff, and the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: February 3, 2025

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff,
Alex Javier Nakamoto

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiff Alex Javier Nakamoto (“Plaintiff”) seeks approval of the
5 PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) entered into with Defendant
6 Skydio, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”), which is attached as Exhibit 2
7 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Approval of PAGA
8 Settlement and Award of Attorneys’ Fees and Costs, Service Award, and Settlement Administration
9 Costs (“Genish Decl.”). The Settlement terms are outlined as follows:

- 10 • Number of Aggrieved Employees: 131 individual Aggrieved Employees.
- 11 • Gross Settlement Amount: Two Hundred Thousand Dollars and Zero Cents
- 12 (\$200,000.00).
- 13 • Requested PAGA Counsel’s Fees: Seventy Thousand Dollars and Zero Cents
- 14 (\$70,000.00) (35% of the Gross Settlement Amount).
- 15 • Requested PAGA Counsel’s Costs: Fifteen Thousand Six Hundred Sixty-Seven Dollars
- 16 and Sixty-Six Cents (\$15,667.66).
- 17 • Service Award: Five Thousand Dollars and Zero Cents (\$5,000.00) to the Plaintiff.
- 18 • Settlement Administration Costs: Not to exceed Five Thousand Dollars and Zero Cents
- 19 (\$5,000.00).
- 20 • Estimated PAGA Penalties: One Hundred and Four Thousand Three Hundred Thirty-
- 21 Two Dollars and Thirty-Four Cents (\$104,332.34), of which seventy-five percent (75%),
- 22 or Seventy-Eight Thousand Two Hundred Forty-Nine Dollars and Twenty-Six Cents
- 23 (\$78,249.26) will be paid to the California Labor and Workforce Development Agency
- 24 (“LWDA”) and the remaining 25% or Twenty-Six Thousand Eighty-Three Dollars and
- 25 Eight Cents (\$26,083.08) will be paid to the Aggrieved Employees.

26 As set forth herein, the Settlement is the product of extensive informal discovery, arms-length
27 negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and
28 Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of the

1 proposed Settlement, among other requested relief.

2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

3 Defendant Skydio, Inc. manufactures and services drones, providing training and support for
4 their products throughout the United States. (Genish Decl., ¶ 7). Defendant employed Plaintiff as an
5 hourly-paid, non-exempt senior assembly technician beginning in or around April 2017 to May 2023.
6 (Declaration of Alex Javier Nakamoto in Support of Motion for Approval of PAGA [“Nakamoto
7 Decl.”], ¶ 3; Genish Decl., ¶ 7).

8 On December 1, 2023, Plaintiff provided written notice by electronic submission to the Labor
9 and Workforce Development Agency (“LWDA”) and by Certified U.S. Mail to Defendant, pursuant
10 to California Labor Code § 2699.3, providing notice of the specific provisions of the California Labor
11 Code which Plaintiff alleged Defendant violated, including the facts and theories to support the
12 allegations (“PAGA Notice”). (Genish Decl., ¶ 8, Exh. 1).

13 On February 6, 2024, Plaintiff filed a Complaint for Enforcement Action under the Private
14 Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.*, seeking civil penalties for various alleged
15 violations of the California Labor Code in the action entitled *Alex Javier Nakamoto v. Skydio, Inc.*,
16 Alameda County Superior Court Case No. 24CV062913 (“Action”). This complaint remains the
17 operative complaint in the Action (“Operative Complaint”) (*Id.*, ¶ 9).

18 On May 6, 2024, Plaintiff and Defendant (collectively, the “Parties”) attended a formal
19 mediation conducted by Monique Ngo-Bonnici, a neutral and respected mediator with extensive
20 experience in complex wage and hour matters. The Parties did not resolve the matter at mediation,
21 however, the Parties successfully reached an agreement in principle two days later on May 8, 2024.
22 The Parties then obtained a fully executed memorandum of understanding on June 6, 2024. (*Id.*, ¶
23 10).

24 During the course of informal discovery in the Action, PAGA Counsel conducted an intensive
25 investigation into the facts of the Action. (*Id.*, ¶ 11). This included obtaining data, information, and
26 documents relating to the underlying alleged violations, including, but not limited to, Plaintiff’s
27 complete personnel file, a sampling of employees’ time records and pay data, Defendant’s Employee
28 Handbooks, and data points for the group of aggrieved employees, so that Plaintiff could assess the

1 number of alleged potential violations and value of the recoverable penalties, as well as evaluate the
2 strengths and weaknesses of their claims. (Genish Decl., ¶ 11).

3 Based on the data, information, and documents received, as well as thorough discussions with
4 Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
5 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii)
6 determine the number of affected pay periods at issue among them, and (iii) construct a damages
7 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
8 Defendant within the relevant statutory period. (*Id.*, ¶ 12). Defendant, however, disputed Plaintiff's
9 claims and disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed
10 PAGA Counsel to further assess the strength of Plaintiff's claims. PAGA Counsel's experience in
11 litigating similar representative wage and hour claims, the degree of investigation that was conducted
12 here, and the amount of data, information, and documents that were obtained, was sufficient to
13 determine the potential value of the PAGA claim, and to evaluate the strength of this claim for
14 purposes of settlement. (*Ibid*).

15 Ultimately, the Parties were able to reach an agreement to resolve the Action in its entirety.
16 The Parties believe the Settlement is fair, reasonable, and adequate. (*Id.*, ¶¶ 13, 14). The Parties
17 understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of
18 Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to affect a final and
19 complete resolution of the Released PAGA Claims. (*Id.*, ¶ 14).

20 Defendant denies all of the claims in the Action, and does not waive, but rather expressly
21 reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual
22 grounds should the Settlement Agreement not be approved by the Court. (*Id.*, ¶ 15). The Settlement
23 Agreement reflects a compromise reached to end litigation in the Action. (*Ibid*). Now, following
24 significant investigation and extensive settlement negotiations, Plaintiff seek approval of the
25 proposed Settlement, which will resolve all representative claims alleged in the Operative Complaint.
26 (*Ibid*).

27 In accordance with California Labor Code sections 2699 *et. seq.*, PAGA Counsel provided
28 notice of the proposed Settlement to the LWDA by uploading this Motion and the Settlement

1 Agreement to the LWDA's online portal concurrently with the filing of this Motion on February 3,
2 2025. (*Id.*, ¶ 16).

3 **III. THE SETTLEMENT TERMS**

4 **A. Definition of the Aggrieved Employees**

5 For purposes of settlement only, the Parties have agreed that "Aggrieved Employees" shall be
6 defined as "all individuals who are current or former non-exempt employees of Defendant, who were
7 employed by Defendant in the State of California during the PAGA period. (Genish Decl., ¶ 17;
8 Settlement Agreement, Page 2). The "PAGA Period" is the period from December 1, 2022, through
9 June 30, 2024. (Genish Decl., ¶ 17; Settlement Agreement, Page 2). Based on its records, Defendant
10 represented that through the date of mediation there were 125 Aggrieved Employees who worked a
11 total of 2,542 Pay Periods. (Genish Decl., ¶ 17; Settlement Agreement, ¶ 6).

12 **B. Amount of Settlement**

13 The Parties have agreed to settle the PAGA claims at issue in the PAGA Notice and Operative
14 Complaint for a non-reversionary Gross Settlement Amount of Two Hundred Thousand Dollars and
15 Zero Cents (\$200,000.00). (Genish Decl., ¶ 18; Settlement Agreement, ¶ 3(a)).

16 **C. Allocation and Funding of the Gross Settlement Amount**

17 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
18 fees, and other allocations. (Genish Decl., ¶ 18). The Gross Settlement Amount includes: (1) PAGA
19 Counsel's fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, equaling
20 Seventy Thousand One Dollars and Zero Cents (\$70,000.00); (2) PAGA Counsel's actual litigation
21 costs and expenses of Fifteen Thousand Six Hundred Sixty-Seven Dollars and Sixty-Six Cents
22 (\$15,667.66); (3) Settlement Administration Costs, not to exceed Five Thousand Dollars and Zero
23 Cents (\$5,000.00); and (4) a Service Award in the amount of Five Thousand Dollars and Zero Cents
24 (\$5,000.00) to Plaintiff. (Genish Decl., ¶ 18; Settlement Agreement, ¶¶ 3.a 1-3).

25 After the above-estimated amounts are deducted from the Gross Settlement Amount, the
26 PAGA Penalties will amount to approximately One Hundred and Four Thousand Three Hundred
27 Thirty-Two Dollars and Thirty-Four Cents (\$104,332.34), of which seventy-five percent (75%), or
28

1 Seventy-Eight Thousand Two Hundred Forty-Nine Dollars and Twenty-Six Cents (\$78,249.26), will
2 be paid to the LWDA (“LWDA Payment”), and twenty-five percent (25%), or Twenty-Six
3 Thousand Eighty-Three Dollars and Eight Cents (\$28,083.08), will be distributed and paid to
4 Aggrieved Employees on a *pro-rata* basis based on the number of pay periods they were employed
5 by Defendant during the PAGA Period (“Pay Periods”). (Genish Decl., ¶ 19; Settlement Agreement
6 ¶¶ 3.a, 5).

7 No later than seven (7) calendar days after the Court’s order granting approval of the
8 Settlement, Defendant shall provide the Settlement Administrator a complete list of all Aggrieved
9 Employees through the PAGA Period that Defendant will in good faith compile from its records,
10 containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last
11 known address; (iii) last known telephone number; (iv) Social Security number; (v) start and end
12 dates of employment; and (vi) number of Pay Periods, (collectively, “PAGA List”) in the form of a
13 Microsoft Excel spreadsheet, or a comparable format. (Genish Decl., ¶ 20; Settlement Agreement, ¶
14 5.c (1)).

15 Within seven (7) calendar days of the Court’s order granting approval of the Settlement,
16 Defendant will fund the Gross Settlement Amount by transmitting the funds to the Administrator.
17 (Genish Decl., ¶ 21; Settlement Agreement, ¶ 5. C (5)).

18 Within seven (7) calendar days after the Administrator receives the PAGA List and Defendant
19 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
20 Payments, the LWDA Payment, the Settlement Administration Costs, the Service Award, and the
21 Attorneys’ Fees and Costs. Disbursement of the Attorneys’ Fees and Costs shall not precede
22 disbursement of Individual PAGA Payments. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 6.c (3)).

23 Prior to mailing the Individual PAGA Payment checks, the Administrator will update the
24 Aggrieved Employees’ mailing addresses using the National Change of Address Database.
25 Additionally, for all Individual PAGA Payment checks that are returned as undeliverable without a
26 USPS forwarding address, the Administrator will conduct an investigation and search for current
27 Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means
28 including, but not limited to, the National Change of Address database, skip traces, and direct

1 contact by the Administrator with the Aggrieved Employees. Upon receiving a returned check, so
2 long as it is received within 30 days of the initial mailing, the Administrator will re-mail the check
3 to the USPS forwarding address provided or to an address ascertained through the Aggrieved
4 Employee address search. The Administrator will promptly send a replacement check to any
5 Aggrieved Employee whose original check was lost or misplaced, if requested by the Aggrieved
6 Employee prior to the void date. (Genish Decl., ¶ 23; Settlement Agreement, ¶ ¶ 6.c (3)).

7 Individual PAGA Payment checks that are issued to Aggrieved Employees will be valid and
8 negotiable for up to one hundred and eighty (180) calendar days after the checks are initially mailed
9 to the Aggrieved Employees, and thereafter, will be canceled. (Genish Decl., ¶ 24; Settlement
10 Agreement, ¶ 6 (c)(4)). Any funds associated with such canceled checks will be distributed to the
11 State of California's Unclaimed Property Fund in the name of the Aggrieved Employee. (Genish
12 Decl., ¶ 24; Settlement Agreement, ¶6 (c)(4)).

13 If the actual number of Pay Periods during the PAGA Period is more than ten percent (10%)
14 above 2,542, then the Gross Settlement Amount will be increased by the percentage that the actual
15 number exceeds the 10% buffer. For example, if the total number of Pay Periods during the PAGA
16 Period is 11% more than 2,542 (i.e. 2,821.62) then the Gross Settlement Amount will increase 1%.
17 (Genish Decl., ¶ 25; Settlement Agreement, ¶ 3 (a) (6)).

18 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

19 The settlement of a PAGA claim requires court approval. (California Labor Code ("Lab.
20 Code") § 2699(l).) The Court must be mindful that "[s]ettlement is a compromise, which balances
21 the possible recovery against the risks inherent in litigating further." (*In re TD Ameritrade Account*
22 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011).) "[T]he very essence
23 of a settlement is ... 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very
24 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
25 consensual settlements." (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir.
26 1982).) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for
27 trial on the merits," or "judged against a hypothetical or speculative measure of what might have been
28 achieved." (*Ibid.*).

1 Although the California Labor Code does not set forth the criteria by which a PAGA
2 settlement is to be evaluated, it is presumed that a reviewing court may take into consideration some
3 of the factors that courts use when reviewing a class action settlement. However, “a PAGA claim
4 asserted on a non-class representative basis...is not considered a class action but a law enforcement
5 action, and therefore does not have to meet the requirements of [a class action].” (*Casida v. Sears*
6 *Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012).)

7 A court’s review of a PAGA settlement necessarily implicates the following unique features
8 that render the approval process distinct from approval of a class action settlement under Code of
9 Civil Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the
10 adequacy of the settlement amount, the Court’s focus is not concerned with the amount aggrieved
11 employees are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s
12 objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or
13 class damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the
14 employer for past illegal conduct,” a reviewing Court must be mindful of the fact that settlement of a
15 PAGA claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454
16 at *11 (E.D. Cal. June 30, 2010).) “Unlike class actions, these civil penalties are not meant to
17 compensate unnamed employees because the action is fundamentally a law enforcement action.”
18 (*Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010).) The
19 Court should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive
20 relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil
21 penalties for the government that otherwise may not have been assessed and collected by
22 overburdened state enforcement agencies.” (*Ibid.*).

23 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
24 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
25 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
26 32774 at *13.) Indeed, “[PAGA] does not create property rights or any other substantive rights” as
27 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
28 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”

1 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).) This
2 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
3 no need for the Court to employ the “two-step approval process” required under California Rules of
4 Court Rule 3.769.

5 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
6 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
7 but also on government agencies and any aggrieved employee not a party to the proceeding...the non-
8 party employees, because they were not given notice of the action or afforded any opportunity to be
9 heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v. Sup.*
10 *Ct.*, 46 Cal.4th 969, 986-87 (2009).) Thus, the scope of a release in a PAGA settlement is confined
11 to the PAGA penalties alleged in the complaint and to the claims that were, or could have been,
12 alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as
13 the only claims at issue are PAGA claims, those will be the only claims extinguished through the
14 Settlement.

15 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

16 **A. The Settlement is Presumed to Be Fair**

17 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
18 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
19 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).) Here,
20 the Settlement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
21 significant investigation to evaluate the strength and potential value of the PAGA claims, and the
22 risks of litigating the PAGA claims through trial; and (2) it was negotiated at great length and effort
23 by counsel with significant experience in similar complex labor and employment matters. (Genish
24 Decl., ¶ 26).

25 **B. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective** 26 **Legal Positions and Recovery Risks**

27 In deciding whether to approve a proposed settlement, a trial court has broad powers to
28 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,

1 438 (1979).) In exercising these powers, the overriding concern is to ensure that a proposed settlement
2 is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). A
3 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor
4 does the settlement have to obtain one hundred percent of the damages sought to be fair and
5 reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250.) In evaluating the reasonableness of a settlement,
6 a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status through trial, the amount
8 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the reaction of the
10 class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
11 128 (2008)). Even though a Kullar analysis is not required for approval of a PAGA settlement, a brief
12 analysis is included to support approval of the Settlement.

13 These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
14 the factors to each case and give due regard to “what is otherwise a private consensual agreement
15 between the parties.” (*Ibid.*).

16 1. Strength of Plaintiffs’ Case

17 In order to prevail at trial, Plaintiff would have to prove violations of the California Labor
18 Code underlying his PAGA claims, demonstrate that Aggrieved Employees suffered violations of the
19 Labor Code, and demonstrate that Defendant’s conduct gives rise to penalties. (*See Elliot v. Spherion*
20 *Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiffs’ claim under [PAGA]
21 is wholly dependent upon her other claims. Because all of plaintiff’s other claims fail as a matter of
22 law, so does her PAGA claim.”].)

23 This case and settlement address important employee protections embodied in the California
24 Labor Code. (Genish Decl., ¶ 27). Plaintiff’s core allegations are that Defendant systematically
25 violated the California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked,
26 failure to properly pay overtime and to pay overtime at the correct rate, failing to provide compliant

27 _____
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial
and the reaction of class members to the proposed settlement are inapplicable.

1 meal and rest periods, failing to timely pay wages during employment and upon termination, failing
2 to provide accurate wage statements, and failing to reimburse necessary business expenses. (Genish
3 Decl., ¶ 27).

4 Defendant's maximum theoretical exposure in the Action, without stacking penalties, totals
5 approximately \$254,200.00 computed by multiplying 2542 PAGA Pay Periods by \$100 each. (Genish
6 Decl., ¶ 28). While the PAGA does provide the potential for a heightened penalty for subsequent
7 violations, courts are often hesitant to award a heightened penalty where there is no prior citation by
8 the Labor Commissioner, as is the case here. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
9 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor
10 Commissioner or any court that it was subject to the California Labor Code). The Ninth Circuit's
11 holding in *Bernstein* also supports a settlement valuation that does not "stack" penalties. (*Ibid.*).

12 Defendant maintained several defenses to Plaintiff's theories of liability, which, if
13 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
14 (Genish Decl., ¶ 29). Throughout this litigation, Defendant maintained, and continues to maintain,
15 that it had, and continues to have, compliant employment policies and practices throughout the time
16 period at issue. (*Ibid.*). Defendant denies that it ever violated any provision of the California Labor
17 Code, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA.
18 (*Ibid.*). Defendant further denied, and continues to deny, that the lawsuit is appropriate for
19 representative treatment for any purpose other than settlement. (*Ibid.*). Defendant also challenged
20 Plaintiff's standing as an aggrieved employee and denied that any of Defendant's other employees
21 whom Plaintiff seeks to represent are aggrieved. (*Ibid.*).

22 Defendant also argued that an important feature of PAGA is that the Court retains discretion
23 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
24 would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." (*Ibid.*). (Lab. Code
25 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
26 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee
27 based upon discretionary factors].)

1 Even if violations of the California Labor Code occurred, which Defendant denies, Defendant
2 contended that said violations would only be considered “initial violations” and thus heightened
3 “subsequent violation” penalties were not warranted. (Genish Decl., ¶ 30). (Lab. Code § 2699(f)(2);
4 *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) [“Until the employer
5 has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed
6 to be aware that its continuing underpayment of employees is a 'violation' subject to penalties.”].)

7 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess
8 cumulative penalties for the maximum number of possible, separate California Labor Code
9 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
10 certain conduct may be regulated by multiple provisions of the California Labor Code that are
11 interrelated and work in tandem. (Genish Decl., ¶ 31). As such, Defendant contended that cumulative
12 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. (Ibid.).

13 Some courts have held that the claims raised by a plaintiff may raise individualized issues
14 and/or be unmanageable and thus not suitable for adjudication as to a group of employees. (*See, e.g.,*
15 *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 25, 29, 31, 34-35 (2014) [even where employer
16 consistently imposed a uniform policy, plaintiff “must still demonstrate that the illegal effects of this
17 conduct can be proven efficiently and manageably” and in litigating representative actions the
18 procedures utilized by the court “may not be used to abridge a party’s substantive rights”]; *Ali v.*
19 *U.S.A. Cab Ltd.*, 176 Cal.App.4th 1333, 1341 (2009) [affirming denial of certification because
20 employees’ declarations attesting to having taken meal and rest breaks demonstrated that
21 individualized inquiries were required to show harm]; *Brinker Restaurant Corp. v. Superior Court*,
22 53 Cal.4th 1004, 1018 (2012) [although employers must authorize employees to take duty-free meal
23 and rest breaks, they are not obligated to affirmatively ensure that no work related tasks are performed
24 during such periods]). Although California case law clearly states that PAGA actions need not satisfy
25 class action requirements, Plaintiff’s Counsel remained mindful of the fact that some courts have
26 nevertheless held that PAGA claims must still be able to prove the alleged violations in an efficient
27 manner.

28 ///

1 While Plaintiff maintains that his PAGA claim has merit, in reaching the Settlement, Plaintiff
2 and his counsel took into account the strengths and weaknesses of each side's position and the
3 uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.
4 (Genish Decl., ¶ 32).

5 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

6 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
7 complexity of further litigation. As discussed above, the Settlement Agreement takes into
8 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant's
9 penalty-liability in this case, which again, may have resulted in a net-zero recovery. Any recovery on
10 these claims is not certain. And even when liability is found, PAGA claims are discretionary, such
11 that the Court could decline to award their full value. Some of Plaintiff's claims are also derivative,
12 and as such, Plaintiff must prevail on the underlying California Labor Code claims in order to prevail
13 on the derivative claims. These risks – when balanced with the fact that the Settlement achieved a
14 very significant recovery (as demonstrated below), and that further litigation posed a risk of
15 diminishing such recovery by increasing litigation expenses – weigh strongly in favor of settlement
16 approval.

17 3. The Benefits Conferred by the Settlement Balance in Favor of Approval

18 The Settlement Agreement provides a *significant* monetary benefit that falls well within “the
19 range of an acceptable settlement” under the circumstances, which is the standard on which the instant
20 Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable
21 even where it only provides a fraction of what could have been obtained at trial:

22 The proposed settlement is not to be judged against a hypothetical or speculative measure of
23 what might have been achieved by the negotiators.” *Officers for Justice v. Civil Serv. Comm'n*,
24 688 F.2d at 625 (emphasis in original). Thus, “the very essence of a settlement is compromise,
25 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624 (citations omitted).
26 As the Second Circuit has pointed out: “The fact that a proposed settlement may only amount
27 to a fraction of the potential recovery does not, in and of itself, mean that the proposed
28 settlement is grossly inadequate and should be disapproved.” *City of Detroit v. Grinnell Corp.*,
495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

See *Linney, supra*, 151 F.3d at 1242

///

1 The PAGA Penalties are currently estimated to be \$104,332.34. After all deductions from the
2 Gross Settlement Amount are made for Attorneys' Fees and Costs, Service Award, and Settlement
3 Administration Costs, \$78,249.26 (i.e. 75% of the PAGA Penalties) will go to the LWDA, and
4 \$26,083.08 (i.e. 25% of the PAGA Penalties) will go to the Aggrieved Employees. Note that the
5 Action was filed on February 6, 2024, and, at that time, the California Labor Code § 2699(i) (2004)
6 specified that "civil penalties recovered by aggrieved employees shall be distributed as follows: 75
7 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved
8 employees." There is no reason to doubt the fairness of the proposed plan of allocation of the PAGA
9 Penalties as it fully complies with California Labor Code section 2699(i), as it was applied at the time
10 of the initiation of the Action. (Genish Decl., ¶ 42).

11 The Settlement is a compromise of highly disputed claims. (*Id.*, ¶ 43). Plaintiff and his counsel
12 recognize the expense and length of continued proceedings necessary to litigate the matter through
13 trial and any possible appeals. (*Ibid.*). Plaintiff and his counsel have also taken into account the
14 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
15 such litigation. (*Ibid.*). Plaintiff and his counsel are also aware of the burdens of proof necessary to
16 establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties
17 in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the
18 State of California, and other Aggrieved Employees. (*Ibid.*). Plaintiff and his counsel have also taken
19 into account Defendant's agreement to enter into a settlement that confers significant relief upon the
20 Aggrieved Employees and the State of California. (*Ibid.*). Considering all of the facts in this case,
21 Plaintiff and his counsel have determined that the Settlement represents a fair, adequate, and
22 reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved
23 Employees and the State of California. (*Ibid.*).

24 The result achieved in this case is well within the range of what is considered an acceptable
25 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
26 other cases. (*Id.*, ¶ 44). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
27 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
28 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,

2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

4. The Scope of the Release is Narrowly Tailored

As discussed above, the California Supreme Court has concluded that in the context of PAGA “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the limited release provided in exchange for the foregoing consideration is limited to a full release of the PAGA Claims that could have been sought by the State of California Labor Commissioner for the violations identified in Plaintiff’s PAGA Notice under California Labor Code §§ 2698 *et seq.* *See* Settlement Agreement, at ¶ 6 (a). As such, this factor balances strongly in favor of approval of the Settlement.

5. Experience and Views of Counsel Favor Approval

PAGA Counsel is experienced in complex representative and class action wage-and-hour litigation. (Genish Decl., ¶¶ 2-6, 47-49). In the view of PAGA Counsel, the benefits conferred by the Settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement. (*Id.*, ¶ 49). Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code § 2699(g)(1)(i)].)

1 6. The Extent of Discovery and Stage of Proceedings Favor Approval

2 In evaluating this element, the Court should be mindful that ““formal discovery is not a
3 necessary ticket to the bargaining table”” [*Linney*, 151 F.3d at 1239], as the relevant consideration is
4 “whether ‘the parties have sufficient information to make an informed decision about settlement.’”
5 *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal.
6 Nov. 9, 2011).

7 Here, the extent of informal discovery conducted was sufficient to enable PAGA Counsel to
8 evaluate the strength and value of the PAGA claim for purposes of settlement. (Genish Decl., ¶¶ 11,
9 12, & 46). Prior to settling, Defendant provided Plaintiff with data, information, and documents
10 relating to the underlying alleged violations, including but not limited to, Plaintiff’s personnel file, a
11 sampling of Aggrieved Employees’ time punch and payroll records, Defendant’s Employee
12 Handbooks, Defendant’s arbitration agreement, and Aggrieved Employees’ data points. (*Id.*, ¶ 11).
13 As discussed above, PAGA Counsel’s investigation was sufficient to, among other things, tabulate
14 with precision the total number of alleged California Labor Code violations at issue during the
15 relevant statutory period and identify the total number of individuals falling within the definition of
16 “Aggrieved Employees” for the relevant statutory period. (*Id.*, ¶¶ 11, 12).

17 Based on PAGA Counsel’s experience litigating wage and hour claims, such investigation
18 was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of
19 this claim for purposes of settlement. (*Id.*, ¶¶ 11, 12, 26, 45 & 46).

20 **VI. THE REQUESTED PAGA COUNSEL FEES PAYMENT IS FAIR AND**
21 **REASONABLE**

22 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys’ fees and costs
23 for bringing her PAGA claim. (Lab. Code § 2699(g) [“Any employee who prevails in any action shall
24 be entitled to an award of reasonable attorney's fees and costs.”].) PAGA Counsel is also entitled to
25 attorneys’ fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
26 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
27 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
28 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,

1 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
2 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) [“when a number of persons
3 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
4 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney’s fees
5 out of the fund.”].)

6 In *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
7 confirmed that “[t]he percentage of fund method survives in California class action cases.”
8 Specifically, the *Laffitte* Court held:

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

13 (*Id.*, at 503 [internal citation omitted].) Fee awards of roughly one-third of the settlement fund are
14 routinely awarded in California state and federal courts in class actions. (*Chavez v. Netflix, Inc.*, 162
15 Cal.App.4th 43, 66, fn. 11 (2008); *see also, e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d
16 373, 379 (9th Cir. 1995) [affirming 33% fee award]).

17 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
18 method, the California Supreme Court has taken the position that trial courts also “retain the
19 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
20 requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253.)
21 Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby
22 enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to
23 deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
24 not be economically feasible to pursue individually, such as here. Trial courts have “wide latitude”
25 in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a
26 manifest abuse of discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also*
27 *Laffitte*, 1 Cal.5th at 506 [holding that “trial court did not abuse its discretion in using [the percentage
28 of fund method], in part to approve the fee request”].) Indeed, it is long settled that the “experienced

1 trial judge is the best judge of the value of professional services rendered in his court.” (*Ketchum v.*
2 *Moses*, 24 Cal.4th 1122, 1132 (2001).)

3 The percentage method is particularly appropriate where a monetary settlement has been
4 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
5 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).) Where the amount of a settlement is a “certain or
6 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
7 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
8 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.) The percentage fee
9 method is preferred in representative actions because “it better approximates the workings of the
10 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49.) California law
11 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
12 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
13 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503.) In cases where the settlement
14 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund
15 created by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at
16 32.) Fee awards that are too small will “chill the private enforcement essential to the vindication of
17 many legal rights and obstruct the representative actions that often relieve the courts of the need to
18 separately adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should
19 approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney
20 and client in comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’
21 fee to compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer*
22 *Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court*,
23 *supra*, 126 Cal.App.4th at 1270].)

24 PAGA Counsel’s application for attorneys’ fees in light of the facts and circumstances
25 surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as
26 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
27 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys’
28 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*

1 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
2 of the settlement as attorneys' fees].) California courts routinely approve attorneys' fees awards
3 "average[ing] around one-third of the recovery." (*Chavez*, 162 Cal.App.4th at 66 [trial court found
4 the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage
5 fee was appropriate]; *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
6 County Superior Court, Case No. BC596892 (June 2016) [approving a fee award of one-third of the
7 settlement amount of \$950,000 in a PAGA action, because it was "reasonable and consistent with fee
8 awards in class action cases"].)

9 Here, PAGA Counsel's fee request of thirty-five percent (35%) of the Gross Settlement
10 Amount (i.e., \$70,000.00) is fair and reasonable based on the percentage of the recovery method.
11 PAGA Counsel has vigorously litigated this case since it was commenced, with the very real
12 possibility of an unsuccessful outcome and no fee recovery of any kind. (Genish Decl., ¶ 47).
13 Counsel for Plaintiff undertook significant investigation and invested a significant amount of time
14 analyzing relevant documents and data to evaluate the nature and extent of the alleged underlying
15 Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff's
16 claims under PAGA. (*Id.*, ¶¶ 11, 12, 27, 45 & 48). The attorneys at Blackstone Law, APC possess
17 combined extensive experience litigating wage and hour and other complex litigation matters, and
18 the attorneys who worked on this matter have been approved as class counsel and/or have had their
19 billable rates approved in the settlement of other class and PAGA actions, numerous times. (*Id.*, ¶
20 49).

21 In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will
22 not receive any compensation until recovery is obtained. (*Id.*, ¶ 48). PAGA Counsel is experienced
23 in complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff,
24 the Aggrieved Employees, and the State of California. (*Id.*, ¶¶ 2-6; 49). Considering the amount of
25 fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling similar
26 matters, Plaintiff maintains that the requested attorneys' fees of thirty-five percent (35%) of the Gross
27 Settlement Amount (i.e., \$70,000.00) are reasonable and should be awarded. (*Id.*, ¶¶ 50, 51).

28 ///

1 **VII. THE REQUESTED PAGA COUNSEL LITIGATION EXPENSES PAYMENT**
2 **IS FAIR AND REASONABLE**

3 The Settlement provides for reimbursement of actual litigation costs and expenses up to the
4 amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00). (Genish Decl., ¶ 52; Settlement
5 Agreement, ¶ 4.a (1)). PAGA Counsel only seeks reimbursement of a total of \$15,667.66 in litigation
6 costs and expenses. (Genish Decl., ¶ 52, Exhibit 4 thereto). Accordingly, PAGA Counsel respectfully
7 requests that the Court reimburse them for actual litigation costs and expenses in the amount of
8 \$15,667.66.

9 **VIII. THE COST OF ADMINISTRATION PAYMENT IS FAIR AND**
10 **REASONABLE**

11 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
12 by the Court, Apex Class Actions LLC to handle the administration of the Settlement. (Genish Decl.,
13 ¶ 53; Settlement Agreement, ¶ 4). The fees and expenses of the Administrator are estimated not to
14 exceed \$5,000.00. (Genish Decl., ¶ 53; Settlement Agreement, ¶ 3.a (3)). These costs include, but
15 are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual
16 PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual PAGA
17 Payment checks to any new addresses obtained, and handling inquiries from Aggrieved Employees
18 regarding the Settlement, among other things. (Genish Decl., ¶ 53). Accordingly, the Court should
19 grant approval of the Cost of Administration Expenses in the amount of up to \$5,000.00 to Apex, a
20 necessary third-party for handling the settlement process. (Ibid.).

21 **IX. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

22 The purpose of a service award is to incentivize aggrieved employees to step into the shoes
23 of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and
24 serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726
25 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the action);
26 *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) (“an incentive award is
27 appropriate ‘if it is necessary to induce an individual to participate in the suit’”). Plaintiff initiated
28 this litigation on behalf of the State of California and his former co-workers who will now be entitled

1 to receive payment from the Settlement. By initiating and pursuing the Action, Plaintiff stepped into
2 the shoes of the State of California and undertook the responsibilities of serving in a representative
3 capacity. (Genish Decl., ¶ 54; Plaintiff Decl., ¶¶ 3-14). Plaintiff was available whenever Plaintiff's
4 counsel needed him and actively tried to obtain information that would benefit the prosecution of the
5 Action. (Genish Decl., ¶ 54; Plaintiff Decl., ¶¶ 3-14). The Service Award is eminently reasonable
6 given the time and effort Plaintiff spent on the Action, and the benefit to the other Aggrieved
7 Employees and the State of California as a result of Plaintiff's actions. (Genish Decl., ¶ 54).
8 Accordingly, Plaintiff respectfully submits that it is appropriate and just for Plaintiff to receive a
9 Service Award in the amount of \$5,000.00 in addition to the Individual PAGA Payment he will
10 receive as an Aggrieved Employee, for his services on behalf of the State of California and the other
11 Aggrieved Employees. (Ibid.).

12 **X. CONCLUSION**

13 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
14 Motion for Approval of PAGA Settlement and Award of Attorneys' Fees and Costs, Service Award,
15 and Settlement Administration Costs and grant the relief requested herein.

16 Respectfully submitted,

17 Dated: February 3, 2025

BLACKSTONE LAW, APC

18
19 By:



Jonathan M. Genish
Attorneys for Plaintiff,
Alex Javier Nakamoto



Superior Court of Alameda County Public Portal

Make a Reservation

NAKAMOTO vs SKYDIO, INC.

Case Number: 24CV062913 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2024-02-06 Location: Rene C. Davidson Courthouse - Department 17

Reservation

Case Name: NAKAMOTO vs SKYDIO, INC.	Case Number: 24CV062913
Type: Motion re: (Motion for PAGA Approval)	Status: RESERVED
Filing Party: ALEX JAVIER NAKAMOTO (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 17
Date/Time: 02/27/2025 3:00 PM	Number of Motions: 1
Reservation ID: 762581044913	Confirmation Code: CR-UC4X4CKE6CSZ6VXAM

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: MasterCard
Account Number: XXXX9913	Authorization: 330817
Payment Date: n/a	

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