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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SETAREH VATAN, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

BESPOKE TREATMENT LLC, a California limited liability company; BENJAMIN SPIELBERG, an individual; and DOES 1 through 50,

Defendants.

Case No.: 23STCV30848

[Assigned for All Purposes to:
Hon. David S. Cunningham III, Dept. 11]

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

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

DATE: September 22, 2025
TIME: 11:00 a.m.
DEPT: 11

Action Filed: December 19, 2023
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on September 22, 2025, at 11:00 a.m. in Department 11 of the Superior Court of the State of California for the County of Los Angeles, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, CA 90012, before the Honorable David S. Cunningham III, Judge presiding, Plaintiff Setareh Vatan ("Plaintiff") will move the Court, pursuant to California Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq.,* for an Order:

1. Approving the settlement of this PAGA representative action in the form agreed to by Plaintiff and Defendants Bespoke Treatment LLC and Benjamin Spielberg (collectively, "Defendants") (together with Plaintiff, the "Parties") in the Amended PAGA Settlement Agreement (the "Settlement" or "Agreement");

2. Appointing Plaintiff's counsel as PAGA counsel, for settlement purposes only, and approving an award to Plaintiff's counsel for reasonable attorney's fees in the amount of $16,666.67 and reasonable costs in the amount of $12,058.39;

3. Appointing Apex Class Action LLC as the Settlement Administrator, and approving payment of Settlement Administrator's costs in the amount of $1,800.00;

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

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

6. Dismissing class action claims without prejudice;

7. Entering final Judgment; and

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

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

DATED: September 11, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Setareh Vatan

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Setareh Vatan ("Plaintiff") seeks approval of a proposed representative action settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA") against Defendants Bespoke Treatment LLC ("Defendant Bespoke") and Benjamin Spielberg (collectively, "Defendants") (collectively, the "Parties").

Due to Defendant's critical financial condition, as discussed in more detail below, the Parties have renegotiated this PAGA settlement which reduced the Gross Settlement Amount from $100,000.00 to **$50,000.00**, but at the same time advanced the funding date of the Gross Settlement Amount from six quarterly installment payments with the last payment to be paid on February 11, 2027, to Defendant funding the full $50,000.00 by **September 10, 2025.** Plaintiff's counsel's fees will also be reduced as it is based on one-third of the Gross Settlement Amount. This amended settlement continues to be fair and equitable to the State and Aggrieved Employees as they will receive payment from settlement of this case more than 1 year earlier than the original settlement and eliminates the risk of Defendants seeking bankruptcy protection.

Even at the reduced Gross Settlement Amount, after deducting Plaintiff's counsel's reasonable attorney's fees and costs award, payment for the Settlement Administrator's cost, and required payment to the California Labor and Workforce Development Agency (the "LWDA"), approximately **$4,868.74** will be paid to approximately **24** Aggrieved Employees. The average approximate share of the settlement paid to Aggrieved Employees is **$202.86** (reduced from $550.90 under the original settlement). Pursuant to Labor Code section 2699(l)(2)[1], Plaintiff now files this unopposed motion, seeking an order approving the proposed Settlement. The terms of the amended settlement is memorialized in the Amended PAGA Settlement Agreement (the "Settlement" or "Agreement")[2].

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

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

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(l)(2).) In deciding whether to grant approval of a proposed settlement, the primary issues to be decided is whether the settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. PLAINTIFF'S CLAIMS AND PROCEDURAL BACKGROUND

Defendants own and operate a mental health therapy company that provides services in the Greater Los Angeles area. (Sung Decl., ¶ 9.) Defendants employed Plaintiff as a non-exempt, hourly paid, part-time psychotherapist in Los Angeles, California. (Declaration of Setareh Vatan in Support of Motion for Approval of PAGA Settlement ["Vatan Decl."], ¶ 2.) Plaintiff contends both Plaintiff and Plaintiff's coworkers were subjected to the same unlawful labor practices during their employment by Defendant. (*Id.*)

On December 19, 2023, Plaintiff submitted the PAGA notice of alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the "LWDA"). (Sung Decl., ¶ 10, **Exh. 2** – PAGA Notice.) Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. (*Id.*)

On the same day, December 19, 2023, Plaintiff filed a Class Action Complaint alleging claims for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties;

(7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Competition. (Sung Decl., ¶ 11.) On February 22, 2024, Plaintiff filed the operative First Amended Complaint ("Operative Complaint") adding a cause of action for Civil Penalties Under the PAGA. (Sung Decl., ¶ 11, **Exh. 3** – Operative Complaint.)

Prior to mediation, the Parties engaged in informal discovery. (Sung Decl., ¶ 12.) As part of informal discovery, it became apparent to Plaintiff's counsel that Defendants executed a *Pick Up Stix* strategy by settling with individual class members and obtaining releases of claims and implemented arbitration agreements with class action waivers. (*Id.*) Specifically, Defendant produced to Plaintiff's counsel settlement agreements and general releases signed by Class Members as well as arbitration agreements signed by current employee-class members. (*Id.*) Defendants' counsel further represented via a signed declaration to Plaintiff's counsel that there are approximately 30 putative class members; 20 class members signed the settlement agreements; 4 class members signed arbitration agreements; and only 7 class members, including Plaintiff, did not sign a settlement agreement or arbitration agreement. (*Id.*) In light of the fact that the vast majority of putative class members either signed settlement agreements or arbitration agreements that do not permit class arbitration, the Parties resolved Plaintiff's PAGA representative claim at mediation on February 11, 2025 and agreed to dismiss the class claims without prejudice. (*Id.*)

On May 28, 2025, Plaintiff's counsel filed a Request for Dismissal of Plaintiff's Class Action Claims Without Prejudice and to Continue June 10, 2025 Post-Mediation Status Conference; Declaration of William C. Sung Per Cal. Rule of Court 3.770 ("Request for Dismissal"). (Sung Decl., ¶ 13, **Exh. 4** – Request for Dismissal.) Plaintiff's counsel appeared at the June 10, 2025 Post-Mediation Status Conference wherein the Court stated that it will dismiss class claims as part of this Motion. (*Id.*) Pursuant to the Request for Dismissal, Plaintiff requests that the Court dismiss class claims. (*Id.*)

B. DISCOVERY AND INVESTIGATION

After Plaintiff propounded written discovery on Defendant Bespoke, Plaintiff and Defendants met and conferred regarding an agreement to mediate the action and further agreed to a protocol for an informal exchange of documents and information before mediation. (Sung Decl., ¶ 14.) Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. (*Id.*) Specifically, Defendant produced: (1) PAGA list with Aggrieved Employees' name, dates of employment, and hourly rate; (2) time records on Excel and wage statements of Aggrieved Employees (not a sampling); (3) *Pick Up Stix* releases and arbitration agreements signed by putative class members; (4) Defendant's employee handbook; and (5) Plaintiff's personnel records. (*Id.*)

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

C. SETTLEMENT NEGOTIATIONS AND AMENDMENT OF THE PAGA SETTLEMENT AGREEMENT

On February 11, 2025, the Parties participated in private mediation before Tagore Subramaniam, Esq., an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, including Defendant's ability to pay for a substantial settlement, the Parties reached a settlement of this Action on a PAGA representative basis, the terms of which are encompassed within the Settlement, and separately resolved Plaintiff's individual, non-PAGA wage and hour claims. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and Plaintiff's counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) The original PAGA settlement was memorialized in the PAGA Settlement Agreement, which is attached as Exhibit 5 to the Amended Declaration of William C. Sung.

Plaintiff filed the original Motion for Approval of PAGA Settlement on July 8, 2025. (Sung Decl., ¶ 17.) After Plaintiff filed the original motion, Defendants' counsel contacted Plaintiff's counsel regarding Defendants' dire financial condition, to which Defendants' counsel has attested in the Declaration of Joanne K. Leighton ("Leighton Decl."). (*See* Sung Decl., ¶ 17, Ex. 6 – Leighton Decl. ¶¶ 3-16.) In order to ensure timely and fair recovery is paid to Aggrieved Employees and the State, Plaintiff's counsel agreed to modify the Gross Settlement Amount from $100,000.00 to **$50,000.00** but at the same time advanced the funding date of the Gross Settlement Amount from six quarterly installment payments with the last payment to be paid on February 11, 2027, to Defendant funding the full $50,000.00 by **September 16, 2025**, which will ensure that funds for this settlement are available. (Sung Decl., ¶ 17.)

D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT

The Settlement covers all current and former non-exempt employees who worked at least one pay period for Defendant Bespoke in California at any time during the PAGA Period ("Aggrieved Employees"). (Agreement, § I.2.) The PAGA Period is from December 19, 2022 through February 11, 2025 (the "PAGA Period"). (Agreement, § I.11.)

The Gross Settlement Amount of the Settlement is $50,000.00. (Agreement, § I.8.) The Settlement provides that Plaintiff's counsel will seek an award of reasonable attorney's fees of $16,666.67, which is equivalent to one-third (33 1/3%) of the Gross Settlement Amount, and up to $20,000.00 in litigation costs. (Agreement, § III.4.a.) At this time, Plaintiff's litigation costs are approximately $12,058.39, including $94.17 in estimated future costs in filing this Amended Motion and supporting papers ($77.97) and filing of the Settlement Administrator's declaration of compliance re settlement administration ($16.17). (Sung Decl., ¶ 18; Exh. 7 – Itemized Costs.)

The Settlement provides the Settlement Administrator will be paid settlement administrator costs not to exceed $1,800.00. (Agreement, § III.4.b.) The Parties jointly selected Apex Class Action LLC. as the neutral entity to administer this Settlement based on its bid of $1,800.00. (Sung Decl., ¶ 18; *see also* Declaration of Kimberly Sutherland of Apex Class Action LLC in Support of Plaintiff's Motion for Approval of PAGA Settlement ["Admin. Decl."], ¶ 7, Exh. B – Admin Bid.)

After deducting Plaintiff's counsel's attorney's fee and cost awards and payment to the Settlement Administrator, in the amounts approved by the Court, the remainder, called the Net Settlement Amount, will be distributed as 75% to the LWDA and 25% to Aggrieved Employees. (Agreement, § III.5.) The amount estimated in the Net Settlement Amount for the LWDA payment and the Aggrieved Employee payment is **$19,474.94**. (Sung Decl., ¶ 19.) Accordingly, approximately **$4,868.74** (25% of the Net Settlement Amount) will be paid to the estimated 24 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved Employee worked during the PAGA Period, and the raw average payment to Aggrieved Employees is estimated at **$202.86**. (*Id.*; *see* Agreement, § III.5.b.)

Defendant will fund the Gross Settlement Amount within 7 days of the Parties' execution of this Agreement (i.e., September 16, 2025) by depositing said payment into an escrow account maintained by the Settlement Administrator. (Agreement, § III.2.) Within 14 calendar days of the Effective Date, Defendant will provide the Settlement Administrator with a PAGA list of all Aggrieved Employees, including their full name, last known mailing address, social security number, and number of pay periods worked during the PAGA Period or dates of employment. (Agreement, § IV.2.)

The Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. (Agreement, § IV.3.) The Settlement Administrator will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiff's counsel; and court-approval administration costs to itself. (Agreement, §§ IV.3, IV.5.)

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to the forwarding address affixed thereto. (Agreement, ¶ IV.4.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address, using a skip-trace or other similar search, using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*) Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. (*Id.*)

Finally, prior to the filing of this Motion, Defendants' counsel provided an updated PAGA list with Aggrieved Employees' dates of employment to Plaintiff's counsel. (Sung Decl., ¶ 35.) Plaintiff's counsel calculated the number of pay periods worked by Aggrieved Employees during the PAGA Period and verified that the escalator clause in Section III.3. of the Agreement will not be triggered based on the updated PAGA list and the PAGA Period will not need to be modified. (*Id.*)

III. DISCUSSION

A. AVAILABILITY OF CIVIL PENALTIES

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

Here, in compliance with Labor Code section 2699.3, on December 19, 2023, Plaintiff provided notice to the LWDA and Defendant. (Sung Decl., ¶ 10; Exh. 2.) Plaintiff's administrative exhaustion periods expired without the LWDA indicating its intent to investigate the allegations. (*Ibid*.) Accordingly, Plaintiff may proceed with this PAGA representative action.

B. THE SETTLEMENT WARRANTS APPROVAL

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

1. <u>The Dual Statutory Purposes of Deterrence and Punishment</u>

As a result of this litigation, Defendant has had to hire legal counsel, engage in informal discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the LWDA pursuant to the terms of the Settlement. Not including its own attorneys' fees and costs, Defendant is paying $50,000.00 to resolve this PAGA action.

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

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

Based on Plaintiff's counsel's analysis of the time and payroll records provided by Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendant's disclosures, there were approximately 24 Aggrieved Employees who collectively worked approximately 486 pay periods. (*Id.*) Plaintiff's counsel's damages valuation utilizes the initial violation rate penalty of $100 in analyzing PAGA penalties because, based on Plaintiff's counsel's investigation, Defendant has not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation penalty does not apply. (*Id*; *see Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157, 1173.) Plaintiff's counsel's valuation of each theory of liability is set forth below.

<u>Meal Period Violations</u>. Plaintiff alleges that Defendants failed to provide her with full, 30-minute meal periods before the end of the fifth hour of work. (Sung Decl., ¶ 22.) Plaintiff's counsel analyzed the time and payroll records and found, out of 296 pay periods, approximately 73 pay periods (or 25%) had one or more meal period violations. (*Id.*) At $100 initial penalty per pay period, an 25% violation rate, and extrapolated for the full PAGA Period, PAGA penalties for meal period violations are **$12,150**. (*Id.*)

<u>Off-the-Clock Work</u>. Plaintiff, as an hourly paid, part-time therapist, contends that she sometimes worked off the clock including working on last-minute deadlines in the evenings directed by Defendants. (Sung Decl., ¶ 23.) Any off-the-clock work would not be reflected in the time or payroll records. (*Id.*) Estimating that Aggrieved Employees worked off-the-clock, during approximately 50% of pay periods, and at $100 initial violation rates and extrapolated to the date of mediation, PAGA penalties for off-the-clock work are **$24,300.00**. (*Id.*)

<u>Rest Period Violations</u>. Plaintiff contends that she sometimes could not take her 10-minute rest breaks because of her work duties. (Sung Decl., ¶ 24.) Any rest period violations would not be reflected in the time or payroll records. (*Id.*) Estimating that Aggrieved Employees experienced rest period violations during approximately 25% of pay periods, and at $100 initial violation rates and

extrapolated to the date of mediation, PAGA penalties for rest period violations are **$12,150.00.** (*Id.*)

Derivative Wage Statement and Waiting Time Violations. Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226(a). (Sung Decl., ¶ 25.) At an estimated 50% violation rate by pay period, and at $100 initial violation rate penalty per pay period, PAGA penalties are estimated at **$24,300.00**. (*Id.*)

Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to pay all wages due to formerly employed Aggrieved Employees upon their separation of employment in violation of Labor Code sections 201 and 202. (*Id.*) At $100 per former employee for 18 former employees, PAGA penalties are estimated to be **$1,800.00**. (*Id.*)

Failure to Reimburse Necessary Business Expenses. Plaintiff alleges that Defendants required Plaintiff to use her personal laptop, cellphone, home internet, and paid Zoom account to service clients. (Sung Decl., ¶ 26.) At an estimated 100% violation rate by pay period, and at $100 initial violation rate penalty per pay period, PAGA penalties are estimated at **$48,600.00**. (*Id.*)

Violation of Labor Code § 212. Plaintiff alleges that Defendants violated Labor Code section 212 by paying Plaintiff through direct deposits only. (Sung Decl., ¶ 27.) At an estimated 100% violation rate by pay period, and at $100 initial violation rate penalty per pay period, PAGA penalties are estimated at **$48,600.00**. (*Id.*)

Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiff's counsel estimates Defendant's maximum exposure for PAGA penalties to be approximately **$171,900.0**, and the Settlement of $50,000 is **29%** of Defendants' maximum exposure. (Sung Decl., ¶ 28.) However, PAGA penalties are subject to discretionary reduction by this Court. (*Id.*) Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where ". . . if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. (*See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part because employer "not aware" of violations].)

Here, Defendant argued that based on their compliant policies and practices, including policies that require employees to record all time worked and take compliant mela and rest periods; provision of computers, internet, and phones at its offices and Zoom accounts; and Aggrieved Employees' voluntarily authorization of direct deposits, the Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code. (Sung Decl., ¶ 28.) Defendant further argues that Plaintiff was a non-exempt, part-time therapist and most therapists are classified as full-time and exempt, and Plaintiff's experiences as a therapist do not apply to other non-exempt employees, such as Transcranial Magnetic Stimulation (TMS) technicians and patient care coordinators. (*Id.*) Thus, Plaintiff's damages exposure is excessive. (*Id.*)

Taking into account Defendant's defenses on the merits and the potential for the Court to reduce a PAGA penalty award, Plaintiff's counsel believes there is a 25% risk factor that the Court will find some of the claims in Defendant's favor and/or exercise its discretion to reduce the PAGA penalty award. (Sung Decl. at ¶ 29.) Accordingly, applying an 25% discount to the maximum potential recovery, Plaintiff's counsel believes the realistic recovery at trial on these claims to be **$128,925.00**.

The $50,000.00 settlement is a fair and equitable result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **38.78%** of Plaintiff's realistic recovery. (Sung Decl., ¶ 30; *see Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Sung Decl., ¶ 30.)

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

For the reasons set forth below, Plaintiff requests that the Court approve an attorney's fee award of **$16,666.67** and cost award of **$12,058.39** to Plaintiff's counsel.

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

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

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

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

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records.

Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

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

According to a leading treatise on class actions: "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys' fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiff request attorneys' fees equal to 33 1/3% of the Gross Settlement Amount, which is in line with the prevailing guidelines established under California case law and in academic literature and is consistent with awards in California. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

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3. The Matter Involves a Fee and Cost Shifting Provision under PAGA

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

This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's counsel for their decision to assume risk by taking on this matter. (Sung Decl., ¶ 31.) In fact, prosecution of this action involved significant financial risk for Plaintiff's counsel. (*Id.*) Plaintiff's counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Plaintiff's counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. (*Id.*)

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

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiff's counsel possess considerable expertise in litigating class action and representative matters. (Sung Decl., ¶¶ 2-7; Declaration of Tiffany L. Luu in Support of Motion for Approval of PAGA Settlement ["Luu Decl."], ¶¶ 2-6.) Plaintiff's counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Sung Decl., ¶¶ 6-7; Luu Decl., ¶¶ 5-6.) Because it is reasonable to compensate Plaintiff's counsel commensurate with their skill, reputation, and experience, Plaintiff's counsel's requested fee award is supported here.

Plaintiff's counsels' experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. Therefore, the requested fee award is reasonable and fair.

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

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Plaintiff or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

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

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

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

Here, Plaintiff's counsel's lodestar, not including work done to renegotiate the original PAGA settlement, drafting the Amended PAGA Settlement Agreement, and drafting this Amended Motion and supporting papers, is **$76,840.00** which is based on 105.8 hours of attorney time for William Sung and Tiffany Luu at their customary hourly rates. (Sung Decl., ¶ 32, **Exhs. 6 and 7** (Time and Task Log for William Sung and Tiffany Luu); Luu Decl., ¶ 8.) Plaintiff's counsel's requested fee award represents a **negative 0.21** lodestar multiplier. (Sung Decl., ¶ 32.) Additionally, Plaintiff's counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (Sung Decl., ¶ 33.) These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.*) Plaintiff's counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's counsel. Thus, the request for attorneys' fees satisfies a lodestar check. Accordingly, the Court should find that the circumstances of the present case justify an award of 33 1/3% of the Gross Settlement Amount for attorneys' fees.

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

Plaintiff's counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's counsel may request reimbursement of costs up to $20,000.00. (Agreement, § III.4.a.) Plaintiff's counsel seek reimbursement of actual costs in the amount of $12,058.39, including $94.14 in estimated future costs in filing this Motion and supporting papers and filing of the Settlement Administrator's declaration of compliance re settlement administration. (Sung Decl., ¶ 18; Exh. 4.) These expenses were reasonably necessary to the litigation and were actually incurred. Moreover, these expenses are below the maximum amount ($20,000.00) allowed in the Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs should be reimbursed in full, up to the maximum amount allowed in the Settlement.

D. THE COURT SHOULD APPROVE THE SETTLEMENT ADMINISTRATION FEES

Pursuant to the terms of the Settlement, the fees and costs of the Settlement Administrator, are to be paid out of the common fund. (Agreement, § III.4.B.) The settlement administration fees are based on a flat-sum amount of $1,800.00. (*Id.*; Admin. Decl., ¶ 7, Exh. C.) The Settlement Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing Aggrieved Employees' names and addresses against the National Change of Address database ("NCOA") prior to mailing, setting up and managing a Qualified Settlement Fund ("QSF") Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiff's counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶ 6-7, Exh. B; Agreement, §§ IV.1-7.) All of these duties are included in the agreed-upon flat fee of $1,800.00. Thus, the Administrator's fees should be approved.

E. PLAINTIFF'S COUNSEL GAVE NOTICE OF THE PAGA SETTLEMENT TO THE LWDA

On September 11, 2025, Plaintiff's counsel caused a copy of the Amended Motion for Approval of PAGA Settlement, Amended Proposed Judgment and Order, the fully executed Agreement to be uploaded to the LWDA's website. (Sung Decl., ¶ 36, **Exh. 10**-LWDA Upload

Confirmation.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the proposed settlement and sign the proposed order and judgment submitted herewith.

DATED: September 11, 2025

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ____________________

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