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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ERNESTO AGUIRRE, an individual and on behalf of all others similarly situated; Plaintiff, vs. AFTON PROPERTIES, INC., a California corporation; STAFFPAY, LLC, a California limited liability company; and DOES 1 through 50, Defendants.	Case No.: CIVSB2412177 [Assigned for All Purposes to: Wilfred J Schneider, Jr., Dept. S32] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND ATTORNEY'S FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES** (Filed Concurrently with Supporting Declarations and [Proposed] Judgment and Order) DATE: April 21, 2026 TIME: 8:30 a.m. DEPT: S32 Action Filed: December 17, 2023 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on April 21, 2026, at 8:30 a.m. in Department S32 of the Superior Court of the State of California for the County of San Bernardino, at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Ernesto Aguirre ("Plaintiff Aguirre") 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 and the related PAGA representative action, *Leah Pauli v. Afton Properties, Inc., et al.*, Case No. CIVSB2411749 (the "*Pauli* Action"), in the form agreed to by Plaintiff, the plaintiff in the *Pauli* Action Leah Pauli ("Plaintiff Pauli"; together with Plaintiff Aguirre, "Plaintiffs"), and Defendants Afton Properties, Inc. and StaffPay, LLC (collectively, "Defendants") in the PAGA Settlement Agreement (the "Settlement" or "Agreement");

2. Appointing Plaintiffs' counsel as PAGA counsel, for settlement purposes only, and approving an award to Plaintiffs' counsel for reasonable attorney's fees in the amount of $100,000.00, broken down as $50,000.00 to Justice for Workers, P.C. (Plaintiff Aguirre's counsel) and $50,000.00 to Aegis Law Firm, PC (Plaintiff Pauli's counsel); and reasonable costs in the amount of $28,546.14, broken down as $8,734.64 to Justice for Workers, P.C. (Plaintiff Aguirre's counsel) and $19,811.50 to Aegis Law Firm, PC (Plaintiff Pauli's counsel);

3. Appointing ILYM Group, Inc. as the Administrator, and approving payment of Administrator's costs in the amount of $4,450.00;

4. Approving Individual Settlements for Plaintiffs in the amount of $10,000.00 each, totaling $20,000.00;

5. Approving the release of PAGA claims by Plaintiffs on behalf of Aggrieved Employees and the LWDA;

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

7. Entering final Judgment;

8. Setting a Non-Appearance Case Review Hearing Regarding Distribution; and

/ / /

9. Without affecting the finality of the Judgment and Order, reserving exclusive and continuing jurisdiction over the Actions, 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, Declarations of William C. Sung, Jessica Campbell, Ernesto Aguirre, Leah Pauli, and Lisa Mullins of ILYM Group, Inc., 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: March 10, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff
ERNESTO AGUIRRE

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I. INTRODUCTION

This Motion seeks Court approval of the settlement of this California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA") representative action brought by Plaintiff Ernesto Aguirre ("Plaintiff Aguirre") and the related PAGA representative action, *Leah Pauli v. Afton Properties, Inc., et al.*, Case No. CIVSB2411749 (the "*Pauli* Action") brought by Leah Pauli ("Plaintiff Pauli"; together with Plaintiff Aguirre, "Plaintiffs") against Defendants Afton Properties, Inc. ("Defendant Afton") and StaffPay, LLC ("Defendant Staffpay"; together with Defendant Afton, "Defendants"). After a full day of global mediation with experienced neutral mediator Jill Sperber, Esq., the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement (the "Settlement" or "Agreement")[1].

The Settlement calls for a Gross Settlement Amount of $300,000.00. After deducting Plaintiffs' counsel's reasonable attorney's fees and costs awards, Individual Settlement for Plaintiffs, and payment for the Administrator's cost, approximately $110,252.90 in civil penalties will be paid to the California Labor and Workforce Development Agency (the "LWDA") and $36,750.97 in civil penalties will be paid to approximately 207 Aggrieved Employees. The average approximate share of the settlement paid to Aggrieved Employees is $177.54. Pursuant to Labor Code section 2699(s)(2), Plaintiff Aguirre now files this unopposed motion, seeking an order approving the proposed Settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." Lab. Code § 2699(s)(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.*

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

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. PLAINTIFFS' CLAIMS AND PROCEDURAL BACKGROUND

Defendant Afton owns and operates a property management company in the State of California and Defendant Staffpay is a staffing agency. Sung Decl., ¶ 8. Defendant Staffpay placed Plaintiff Aguirre to work for Defendant Afton as an hourly paid, non-exempt employee from approximately May 2023 to February 2024 as a maintenance technician in Redlands, California. Declaration of Ernesto Aguirre ("Aguirre Decl."), ¶ 2. Defendant Staffpay placed Plaintiff Pauli to work for Defendant Afton as an hourly paid, non-exempt employee from approximately May 2023 to February 2024 as a community manager in Redlands, California. Declaration of Leah Pauli ("Pauli Decl."), ¶ 3. Plaintiffs contend they and their coworkers were subjected to the same unlawful labor practices during their employment by Defendants. Aguirre Decl., ¶ 2; Pauli Pauli Decl., ¶ 4.

On March 12, 2024, Plaintiff Aguirre submitted a letter of alleged Labor Code violations to Defendants and the LWDA. Sung Decl., ¶ 9, **Exh. 2** – *Aguirre* LWDA Letter. Plaintiff Aguirre's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. *Ibid.*

On April 11, 2024, Plaintiff Aguirre filed the Class Action Complaint alleging causes of action 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., ¶ 10. On May 22, 2024, Plaintiff Aguirre filed the First Amended Complaint adding a cause of action for under the California Private Attorneys General Act. Sung Decl., ¶ 11, **Exh. 3** – *Aguirre* First Amended Complaint. Thereafter, Plaintiff Aguirre requested, and the Court approved, submission of Plaintiff Aguirre's individual claims to binding arbitration, dismissal of class claims, and stay of representative PAGA claims pending arbitration. Sung Decl., ¶ 12.

On April 8, 2024, Plaintiff Pauli submitted a letter of alleged Labor Code violations to Defendants and the LWDA. Declaration of Jessica Campbell ("Campell Decl."), ¶ 4, **Exh. 1** – *Pauli* LWDA Letter. Plaintiff Pauli's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. *Ibid.*

On April 8, 2024, Plaintiff Pauli filed a Class Action Complaint alleging causes of action for: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Reimburse Necessary Business Expenses; (6) Wage Statement Penalties; (7) Waiting Time Penalties; and (8) Unfair Competition. Campbell Decl., ¶ 3. On July 9, 2024, Plaintiff Pauli filed the First Amended Complaint adding a cause of action for under the California Private Attorneys General Act. Campbell Decl., ¶ 5, **Exh. 2** – *Pauli* First Amended Complaint. Thereafter, Plaintiff Pauli requested, and the Court approved, submission of Plaintiff Pauli's individual claims to binding arbitration, dismissal of class claims, and stay of representative PAGA claims pending arbitration. Campbell Decl., ¶ 6.

B. DISCOVERY, INVESTIGATION, AND MEDIATION

Thereafter, the Parties agreed to attend a global mediation of the Actions and, prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. Sung Decl., ¶ 13. Specifically, Defendants produced: (1) PAGA demographics including the number of Aggrieved Employees and PAGA Pay Periods; (2) time and payroll records for a 20% random sampling of Aggrieved Employees during the PAGA Period; (3) Defendants' employee handbook and standalone policies and procedures; and (4) Plaintiffs' personnel records and wage statements. *Ibid*.

Plaintiffs' counsel retained and worked with an expert data scientist, Berger Consulting Group, to analyze and review the documents regarding Defendants' wage and hour policies and practices, Aggrieved Employees' time and pay records, and other information provided by

Defendants and Plaintiffs. Sung Decl., ¶ 14. Plaintiffs' counsel were able to evaluate the probability of success on the merits and Defendants' maximum and risk-adjusted monetary exposure and prepare a damage analysis prior to mediation. *Ibid*. The time and pay records of a sampling of Aggrieved Employees allowed Plaintiffs' counsel and their expert to prepare an analysis with a high degree of certainty. *Ibid*. In conjunction with their extensive factual investigation, Plaintiffs' counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. *Ibid*. Thus, Plaintiffs and Plaintiffs' 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. *Ibid*.

On May 8, 2025, the Parties participated in private mediation before Jill Sperber, Esq., an experienced, neutral, class action and PAGA mediator. Sung Decl., ¶ 15. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. *Ibid*. 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. *Ibid*.

The Parties did not reach a settlement at mediation on May 8, 2025. Sung Decl., ¶ 16. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, the Parties eventually reached a settlement of the Actions on June 13, 2025, the material terms of which are encompassed within the Settlement. *Ibid.* The Parties recognized that the issues presented in the Actions 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. *Ibid*. Plaintiffs considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. *Ibid*.

C. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT

The Settlement covers all persons employed by Defendants as a non-exempt employee in California during the PAGA Period ("Aggrieved Employees"). Agreement, § 1.4. The PAGA Period is March 18, 2023 to June 13, 2025. Agreement, § 1.21. The Agreement provides an

Escalator Clause up to 7,468 Pay Periods and, if the number of Pay Periods exceeds 7,468, Defendants may elect to increase the Gross Settlement Amount or adjust the PAGA Period end date so the number of Pay Periods stay within 7,468 Pay Periods. Agreement, § 8.

The Gross Settlement Amount of the Settlement is $300,000.00. Agreement, § 1.11. The Settlement provides that Plaintiffs' counsel will seek an award of reasonable attorney's fees of $100,00.00, which is equivalent to one-third (33 1/3%) of the Gross Settlement Amount, and up to $35,000.00 in litigation costs. Agreement, § 3.2.1. Plaintiffs' litigation costs are approximately $28,546.14, including estimated future costs in filing this Motion and supporting papers ($77.97), supplemental filings for this Motion ($16.17), Court Call fee for hearing on this Motion ($72.00), and filing of the Administrator's declaration of compliance ($16.17). Sung Decl., ¶ 17; **Exh. 4** – *Aguirre* Itemized Costs; Campbell Decl., ¶ 25, **Exh. 3** – *Pauli* Itemized Costs.

The Administrator will be paid administration costs not to exceed $4,450.00. Agreement, § 3.2.3. The Parties jointly selected ILYM Group, Inc. as the neutral entity to administer this Settlement based on its bid of $4,450.00. Sung Decl., ¶ 18; *see also* Declaration of Lisa Mullins of ILYM Group, Inc. ("Admin. Decl."), ¶ 6, **Exh. C** – Administrator Bid.

The Settlement further provides for Individual Settlement for Plaintiffs in the amount of $10,000.00 each, totaling $20,000.00, in exchange for the general release of their individual wage claims in arbitration in addition to any Individual PAGA Payments that Plaintiffs are entitled to receive as Aggrieved Employees. Agreement, § 3.2.2.

After deducting Plaintiffs' counsel's attorney's fee and cost awards, Individual Settlement for Plaintiffs, and payment to the 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, §§ 1.17, 3.2.4. The amount estimated in the Net Settlement Amount for the LWDA payment and the Aggrieved Employee payment is **$147,003.86**. Sung Decl., ¶ 19 Accordingly, approximately **$36,750.97** (25% of the Net Settlement Amount) will be paid to the estimated 207 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 **$177.54**. *Ibid*.

Defendants will fund the Gross Settlement Amount within 30 calendar days of the Effective Date, which is the date that the Court enters a final order and judgment approving the Settlement. Agreement, §§ 1.10, 4.3. Within 15 calendar days of the Effective Date, Defendants will provide the 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, § 4.2.

Upon receipt of the PAGA list, the Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Agreement, § 4.4.1. Within 14 calendar days of the Settlement being fully funded, the Administrator will mail copies of the explanatory letter, attached as **Exhibit 5** to the Declaration of William C. Sung, and translated into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiffs' counsel; and court-approval administration costs to itself. Agreement, § 4.4; Sung Decl., ¶ 20, **Exh. 5** – Explanatory Letter.

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to the forwarding address affixed thereto. Agreement, § 4.4.2. If no forwarding address is provided, the 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. *Ibid*. 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. Agreement, § 4.4.3.

III. <u>DISCUSSION</u>

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. Lab. Code, § 2699(m). 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, Plaintiffs provided notice to the LWDA and Defendants March 12, 2024 and April 8, 2024. Sung Decl., ¶ 9; Campbell Decl., ¶ 4. Plaintiffs' administrative exhaustion periods expired without the LWDA indicating its intent to investigate the allegations. *Ibid*.

B. THE SETTLEMENT WARRANTS APPROVAL

Settlement of PAGA claims must be approved by a Court. Lab. Code § 2699(s)(2). 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, Defendants have had to hire legal counsel, engage in informal discovery, and participate in mediation. Defendants are 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, Defendants are paying $300,000.00 to resolve this matter.

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

Plaintiffs' counsel have conducted a thorough investigation into the facts of this case. Sung Decl., ¶ 21. Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiffs' counsel is of the opinion that the Settlement is fair, reasonable, and adequate. *Ibid*. Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendants on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State. *Ibid*. The Settlement avoids the risks, burdens, and the accompanying expense of further litigation. *Ibid*. 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. *Ibid*. Moreover, preparation for trial would remain for the Parties, as well as the prospect of appeals in the wake of any summary judgment ruling. *Ibid*. As a result, the Parties would incur considerably more attorneys' fees and costs through trial. *Ibid*.

Based on Plaintiffs' counsel's analysis of the time and payroll records provided by Defendants and on information from Plaintiffs, Plaintiffs' counsel evaluated Defendants' maximum and risk-adjusted potential exposure. Sung Decl., ¶ 22. Based on Defendants' disclosures, there were approximately 207 Aggrieved Employees who collectively worked approximately 6,789 pay periods. *Ibid*.

Plaintiffs' assessment of potential recovery of PAGA penalties in this Motion is limited to $100 initial penalties because, to Plaintiffs' knowledge, Defendants have not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiffs asserted and the heightened subsequent violation penalty should not apply. Sung Decl., ¶ 23; *see* Lab. Code § 2699(f)(2)(B) (authorizing heightened $200 per pay period civil penalty if, "[w]ithin the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful.). Plaintiffs' counsel's valuation of each theory of liability is set forth below.

As to all claims, Defendants argue the Court will exercise its discretion to reduce PAGA penalties. Sung Decl., ¶ 24. Pursuant to Labor Code § 2699(e)(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, Defendants argue that based on their compliant policies and practices, their defenses on Plaintiffs' theories of liability on the merits, and the hyper technical nature of the regular rate claims, the Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code. Sung Decl., ¶ 24.

<u>Off-the-Clock Work</u>. Plaintiffs allege they have worked off the clock pre- and post-shift and being on call. Sung Decl., ¶ 25. Any off-the-clock work would not be reflected in the records. *Ibid.* Estimating that Aggrieved Employees worked off the clock in approximately 25% of pay periods, Plaintiffs' expert estimates Defendants' maximum penalty exposure for off the clock work to be approximately $201,625.00. *Ibid.*

In response and in addition to the penalty reduction defenses, Defendants argue they have compliant policies that prohibit working off the clock and require all employees to receive wages for all hours worked. *Ibid.* The payroll records show that Defendants paid over 15,000 overtime hours, totaling over $700,000 over in overtime paid. *Ibid.* Defendants thus contends that Plaintiffs' off-the-clock work claim is individualized and not manageable as there is no evidence of a common policy or practice forcing Aggrieved Employees to work off the clock and numerous individual inquiries would be needed to assess which Aggrieved Employees, if any, worked off the clock, how often, the reasons why a particular Aggrieved Employees worked off the clock, and whether Defendants knew or should have known that Aggrieved Employee worked off the clock for the imposition of classwide liability. *Ibid*; *see, e.g., Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1369, as modified (Dec. 24, 2013) (standard for liability for off-the-clock work). Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$60,487.50**. *Ibid.*

Regular Rate Violations. Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554; *see also Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (meal and rest period premiums to be paid at regular rate of pay); Lab. Code § 246(l)(1) (paid sick leave to be paid at the regular rate of pay or at a rate based on a 90-day lookback of compensation earned).

Here, Plaintiffs claim that Defendants failed to incorporate non-discretionary incentive compensation into the regular rate for overtime, meal period premium, and paid sick leave. Sung Decl., ¶ 26. Plaintiffs' expert estimates Defendants' maximum exposure for regular violations to be approximately $187,300.00. *Ibid.* In response, Defendants argue that any underpayment of is "pennies and cents" and grossly disproportionate to a $100 penalty per pay period. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties to arrive at a realistic exposure of **$56,190.00**. *Ibid*

Meal Period Violations. Plaintiffs alleges that they and other employees frequently did not receive compliant meal breaks. Sung Decl., ¶ 27. Plaintiffs' expert analyzed the records and found a net 15.20% violation rate by pay periods after applying meal period premiums (i.e., 15.20% of pay periods had one or more shifts without compliant meal period punches). *Ibid.* Plaintiffs' expert estimates Defendants' maximum exposure for regular violations to be approximately $122,600.00. *Ibid.*

In response and in addition to the penalty reduction defense, Defendants counter that they have maintained compliant meal period policies and practices throughout the PAGA Period and always provided compliant meal periods in line with those policies. *Ibid; see Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041 (holding employers need only "provide" meal periods to employees and are not obligated to "police" meal periods). Defendants point to the fact that the sampling time records showed superior meal period compliance rate (Plaintiffs' expert found less than 4.8% of shifts had a facial meal period violations) and that it paid approximately over 2,000 meal period premiums as evidence of its superior meal period compliance practices. *Ibid.* As such, Defendants maintain Plaintiffs' meal period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$36,780.00**. *Ibid.*

Rest Period Violations. Plaintiffs allege that they and other employees frequently were unable to take their rest breaks. Sung Decl., ¶ 28. Any rest period violations would not be reflected in the time or payroll records. *Ibid*. Any instances of such meal period violations would be not reflected in the records. *Ibid.* Estimating that Aggrieved Employees worked off the clock in approximately 25% of pay periods, Plaintiffs' expert estimates Defendants' maximum penalty exposure for meal period violations to be approximately $201,625.00. *Ibid.*

In response, Defendants counter they have maintained compliant rest period policies and practices throughout the PAGA Period and always provided compliant rest periods in line with those policies. *Ibid*. As such, Defendants maintain Plaintiffs' rest period claim is unmanageable since individual inquiries would be needed to assess which employees, if any, took non-compliant rest periods, how many rest periods were non-compliant, and the reasons why a particular employee did not take a rest period on a particular shift. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$60,487.50**. *Ibid.*

Failure to Reimburse Necessary Business Expenses. Plaintiffs claim they were required to use their personal cellphone for work. Sung Decl., ¶ 29. Estimating that 25% of Aggrieved Employees were in positions that require use of their cellphones, Plaintiffs' expert estimate Defendants' maximum penalty exposure to be approximately $201,625.00. *Ibid.* In response, Defendants argue that Plaintiffs could have used office phones and only used their personal cellphones out for their own convenience. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$60,487.50**. *Ibid.*

Derivative Wage Statement and Waiting Time Penalties. As a result of the unpaid wages and meal and rest period premium wages described above, Plaintiffs contend that Defendants failed to comply with its final pay obligations set forth in Labor Code §§ 201 to 202 to former employees and failed to issue accurate itemized wage statements to Class Members as set forth in Labor Code § 226(a). Sung Decl., ¶ 30. Thus, the claims for waiting time and wage statement penalties are derivative of the underlying claims. *Ibid.*

Estimating a 50% violation rate, Plaintiffs' expert estimates Defendants' maximum exposure for derivative wage statement penalties to be approximately $403,250.00. *Ibid.* In response, Defendants advance the same defenses as for the underlining claims. *Ibid.* Thus, Plaintiffs discounted Defendants' maximum exposure by 70% to account for the risk of the Court reducing penalties and the risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a realistic exposure of **$120,975.00**. *Ibid.* Estimating every single formerly employed Aggrieved Employee experienced at least one violation, and at $100 per former employee, Plaintiffs' expert estimates Defendants' maximum exposure for derivative waiting time penalties to be approximately **$6,800.00** and Plaintiffs do not apply any further discount to this claim. *Ibid.*

Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiffs' counsel believes Defendants' maximum exposure for PAGA penalties is $1,324,825.00 and their realistic recovery at trial on these claims to be **$397,447.50**. Sung Decl., ¶ 31. The $300,000.00 settlement is a fair result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **75.48%** of Plaintiffs' realistic recovery. *Ibid.*; *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 a fair and equitable 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., ¶ 31.

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

For the reasons set forth below, Plaintiffs request that the Court approve an attorney's fee award of **$100,00.00** and cost award of **$28,546.14** to Plaintiffs' counsel.

1. Plaintiffs' Counsel Request an Award of Fees Based on the Common Fund Method

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 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." *Id.* at 34.

Plaintiffs' 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, 167 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." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, 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." 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 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 1375. 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 1378-1379. 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, 378-379 (approving attorneys' fee award of 33%).

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

"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. *Ibid.*; *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, Plaintiffs 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.").

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(k)(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 . . ." *Ibid*. 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 Defendants while at the same time rewarding Plaintiffs' counsel for their decision to assume risk by taking on this matter. Sung Decl., ¶ 32. In fact, prosecution of this action involved significant financial risk for Plaintiffs' counsel. *Ibid*. Plaintiffs' counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. *Ibid*. Once Plaintiffs' 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. *Ibid*.

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

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiffs' counsel possess considerable expertise in litigating class action and representative matters. Sung Decl., ¶¶ 2-6; Campbell Decl., ¶¶ 9-21. Plaintiffs' 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., ¶ 4; Campbell Decl., ¶ 11. Because it is reasonable to compensate Plaintiffs' counsel commensurate with their skill, reputation, and experience, Plaintiffs' counsel's requested fee award is supported here.

Plaintiffs' counsels' experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of this Settlement. Sung Decl., ¶ 33; Campbell Decl., ¶ 11. 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. Sung Decl., ¶ 33. Based on these and other factors, Plaintiffs' counsel have recently received fee awards based on a percentage of the gross recovery. Sung Decl., ¶ 33; Campbell Decl., ¶ 11. Therefore, the requested fee award is reasonable and fair.

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

"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. Ibid. 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.'" *Ibid*. (quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246-249).

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*, 82 Cal.App.4th at 49-

50).

Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. *Id.* at 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.” *Ibid*. “Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis.” *Id.* at 556-557. 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(k)(1). Although PAGA does not provide a specific standard for evaluating attorney’s 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, 944-945). The court in *Hermosillo* granted, in part, a plaintiff's counsel's unopposed motion for attorney's fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement fund was requested for fees. *Id.* at *1–3.

Here, Plaintiffs' counsel's current lodestar is **$127,385.00**, broken down as:

Name	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
Justice for Workers, P.C. William C. Sung (14th Year Attorney)	$948	$850	59.3	$50,405.00
Justice for Workers, P.C. Tiffany L. Luu (5th Year Attorney)	$581	$500	38.2	$19,100.00
Aegis Law Firm Kashif Haque (25th Year Attorney)	$1,141	$950	22.1	$20,995.00
Aegis Law Firm Jessica L. Campbell (15th Year Attorney)	$948	$800	14.1	$11,280.00
Aegis Law Firm Jamie Loos (4th Year Attorney)	$581	$450	56.9	$25,605.00
		Total:	**190.6**	**$127,385.00**

Sung Decl., ¶¶ 34-38. Plaintiffs' counsel's requested fee award of $100,000.00 ($50,000.00 to Plaintiff Aguirre's counsel and $50,000.00 to Plaintiff Pauli's counsel) represents a **negative 0.79** lodestar multiplier. Sung Decl., ¶ 34. Additionally, Plaintiffs' 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., ¶ 39. 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 Plaintiffs regarding the case. *Ibid*.

Plaintiffs' counsel also bear the risk of taking whatever actions are necessary if Defendants fail 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 Plaintiffs' 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 attorney's fees.

6. Plaintiffs' Counsels' Costs Are Reasonable and Actually Incurred

Plaintiffs' 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, Plaintiffs' counsel may request reimbursement of costs up to $35,000.00. Agreement, § III.4.a. Plaintiffs' litigation costs are approximately $28,546.14 ($8,734.64 incurred by Plaintiff Aguirre's counsel and $19,811.50 incurred by Plaintiff Pauli's counsel. Sung Decl., ¶ 17; Exh. 4; Campbell Decl., ¶ 25, Exh. 3. These expenses were reasonably necessary to the litigation and were actually incurred. Moreover, these expenses are below the maximum amount ($35,000.00) 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 Administrator, are to be paid out of the common fund. Agreement, § 3.2.3. The settlement administration fees are based on a flat-sum amount of $4,450.00. *Ibid*.; Admin. Decl., ¶ 6, Exh. C. The Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing Aggrieved Employees' names and addresses against the NCOA prior to mailing, setting up and managing a QSF Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiffs' counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the Aggrieved Employee, and submitting final accounting to the Court. Admin Decl., ¶¶ 4-7, Exh. C;

Agreement, §§ 4.2, 4.4, 4.4.1-4.4.3, 7.1-7.4. All of these duties are included in the agreed-upon flat fee of $4,450.00. Thus, the Administrator's fees should be approved.

E. PLAINTIFFS' INDIVIDUAL SETTLEMENT PAYMENTS

As part of the Settlement, the Parties agreed to settle Plaintiffs' individual claims with a general release of all wage claims and a waiver of Civil Code § 1542 for $10,000.00 to each Plaintiff. Agreement, §§ 3.2.2, 5.1. Plaintiffs' declarations describe contributions to the case. Aguirre Decl., ¶¶ 2-6; Pauli Decl., ¶¶ 5-12.

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

On March 10, 2026, Plaintiffs' counsel gave notice of this Settlement to the LWDA by filing a copy of the fully executed Agreement, Motion for Approval of PAGA Settlement, supporting declarations, and Proposed Judgment and Order with the LWDA via uploading through its website. Sung Decl., ¶ 40, **Exh. 6**-LWDA Filing Confirmation.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the proposed Settlement, sign the Proposed Judgment and Order submitted herewith, and set a Compliance Hearing Re: Status of Distribution.

Respectfully submitted,

DATED: March 10, 2026

JUSTICE FOR WORKERS, P.C.

By: ______________________

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ERNESTO AGUIRRE