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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10 JORGE NIETO, an individual and on behalf of
11 all others similarly situated;

12 Plaintiff,

13 vs.

14 PICK-YOUR-PART AUTO WRECKING, a
15 California corporation; and DOES 1 through
50,

16 Defendants

Case No.: CVRI2402255

[Assigned for All Purposes to:
Hon. Harold W. Hopp, Dept. 1]

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

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

DATE: May 29, 2025

TIME: 8:30 a.m.

DEPT: 1

RESERVATION NO: 504424986153

Action Filed: April 23, 2024

Trial Date: Not Set

1 TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE that on May 29, 2025 at 8:30 a.m. in Department 1 of the
3 Superior Court of the State of California for the County of Riverside, Historic Courthouse, located
4 at 4050 Main Street, Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding,
5 Plaintiff Jorge Nieto (“Plaintiff”) will move the Court, pursuant to California Private Attorneys
6 General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for an Order:

7 1. Approving the settlement of this PAGA representative action in the form agreed to
8 by Plaintiff and Defendant Pick-Your-Part Auto Wrecking (“Defendant”) (together with Plaintiff,
9 the “Parties”) in the PAGA Settlement Agreement (the “Settlement” or “Agreement”);

10 2. Appointing Plaintiff’s counsel as PAGA counsel, for settlement purposes only, and
11 approving an award to Plaintiff’s counsel for reasonable attorney’s fees in the amount of
12 \$105,000.00 and reasonable costs in the amount of \$13,198.81;

13 3. Appointing Phoenix Settlement Administrators as the Settlement Administrator, and
14 approving payment of Settlement Administrator’s costs in the amount of \$8,250.00;

15 4. Approving the release of PAGA claims by Plaintiff;

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

17 6. Entering final Judgment; and

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

22 This Motion will be based upon this notice, the attached Memorandum of Points and
23 Authorities, Declarations of William C. Sung, Tiffany L. Luu, Jorge Nieto, and Jodey Lawrence
24 of Phoenix Settlement Administrators, and exhibits thereto that were filed concurrently herewith,
25 the records and files in this action, and any other further evidence or argument that the Court may
26 properly receive at or before the hearing.

27 ///

28 ///

1 DATED: April 28, 2025

Respectfully submitted,

2 **JUSTICE FOR WORKERS, P.C.**

3
4 By:



5 William C. Sung

6 Tiffany L. Luu

Attorneys for Plaintiff Jorge Nieto

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jorge Nieto (“Plaintiff”) seeks approval of a proposed representative action
4 settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code
5 sections 2698, *et seq.* (“PAGA”) against Defendant Pick-Your-Part Auto Wrecking (“Defendant”)
6 (together, the “Parties”). After a full day of mediation with experienced neutral mediator Steven
7 Pearl, Esq., the Parties reached a settlement and thereafter executed a PAGA Settlement Agreement
8 (the “Settlement” or “Agreement”)¹.

9 The Settlement calls for a Gross Settlement Amount of **\$315,000.00**. After deducting
10 Plaintiff’s counsel’s reasonable attorney’s fees and costs awards, payment for the Settlement
11 Administrator’s cost, and required payment to the California Labor and Workforce Development
12 Agency (the “LWDA”), approximately **\$47,137.80** will be paid to approximately **865** Aggrieved
13 Employees. The average approximate share of the settlement paid to Aggrieved Employees is
14 **\$54.49**. Pursuant to Labor Code section 2699(1)(2)², Plaintiff now file this unopposed motion,
15 seeking an order approving the proposed Settlement.

16 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
17 statute, which states that the “court shall review and approve any penalties sought as part of a
18 proposed settlement agreement pursuant to this part.” (Lab. Code § 2699(1)(2).) In deciding whether
19 to grant approval of a proposed settlement, the primary issues to be decided is whether the
20 settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal.,
21 July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O’Connor v.*
22 *Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

23 As set forth herein, the proposed Settlement embodies all the features of a settlement that is
24 fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated
25

26 ¹ A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung in Support of
27 Motion for Approval of PAGA Settlement (“Sung Decl.”). The proposed explanatory letter regarding PAGA settlement
28 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.

² 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.

1 by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient
2 investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4)
3 reflects a reasoned compromise based directly on the relative strength and value of the PAGA
4 claims, as well as the risks, expense, complexity, and likely duration of further litigation. The
5 Settlement further complies with the Court’s PAGA Case Management Order, Section D.

6 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

7 **A. PLAINTIFF’S CLAIMS AND PROCEDURAL BACKGROUND**

8 Defendant owns and operates salvage yards for consumers to purchase used car parts in
9 California. (Sung Decl., ¶ 9.) Defendant employed Plaintiff as an hourly-paid, non-exempt
10 employee from approximately July 2021 to August 2023 as a fluid technician at its Riverside and
11 Sun Valley yards. (Declaration of Jorge Nieto in Support of Motion for Approval of PAGA
12 Settlement [“Nieto Decl.”], ¶ 2.) Plaintiff contends both Plaintiff and Plaintiff’s coworkers were
13 subjected to the same unlawful labor practices during their employment by Defendant. (*Id.*)

14 On April 23, 2024, Plaintiff filed the initial Complaint alleging individual wage and hour
15 claims for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period
16 Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties;
17 (7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Competition. (Sung Decl., ¶
18 10.) Also on April 23, 2024, Plaintiff submitted the LWDA Letter of alleged Labor Code violations
19 to Defendant and the California Labor and Workforce Development Agency (the “LWDA”). (Sung
20 Decl., ¶ 11, Exh. 2 – PAGA Notice.) Plaintiff’s administrative exhaustion period expired without
21 the LWDA indicating its intent to investigate the allegations. (*Id.*)

22 On July 2, 2024, Plaintiff filed the operative First Amended Class and Representative
23 Action Complaint (the “Operative Complaint”) adding a Ninth Cause of Action for Civil Penalties
24 under PAGA. (Sung Decl., ¶ 12, Exh. 3 – Operative Complaint.) The Operative Complaint has been
25 uploaded to the LWDA in compliance with PAGA. (*Id.*)

26 The Parties met and conferred regarding an arbitration agreement signed by Plaintiff and
27 agreed to attend mediation on a PAGA-only basis with class claims to be dismissed without
28 prejudice. (Sung Decl., ¶ 13.) On January 27, 2025, the Parties participated in a PAGA mediation

1 before mediator Steven Pearl, Esq., where the Settlement was achieved. (*Id.*) On March 19, 2025,
2 after the Parties fully executed the Agreement, Plaintiff filed a Request for Dismissal of Class
3 Claims Without Prejudice, which the Court granted on March 21, 2025. (*Id.*)

4 **B. DISCOVERY AND INVESTIGATION**

5 Following the filing of the Operative Complaint, Plaintiff and Defendant met and conferred
6 regarding an agreement to mediate the action on a PAGA representative basis and further agreed to a
7 protocol for an informal exchange of documents and information before mediation. (Sung Decl., ¶ 14.)
8 Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully
9 mediate this matter. (*Id.*) Specifically, Defendant produced: (1) PAGA list with Aggrieved Employees'
10 employee identification numbers, dates of employment, and job position; (2) all Aggrieved Employees'
11 time and payroll records; (3) Defendant's employee handbook, meal period waiver, and arbitration
12 agreement in effect during the PAGA Period; and (4) Plaintiff's personnel file. (*Id.*)

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

24 **C. SETTLEMENT NEGOTIATIONS (CMO D.1.b.)**

25 On January 27, 2025, the Parties participated in private mediation before Steven Pearl, Esq.,
26 an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) The settlement
27 negotiations were at arm's length and, although conducted in a professional manner, were
28 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement

1 of the dispute, but each side was also prepared to litigate their position through trial and appeal if a
2 settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the
3 strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a
4 settlement of this Action, the material terms of which are encompassed within the Settlement. (*Id.*)
5 The Parties recognized that the issues presented in the Action are likely only to be resolved with
6 extensive and costly pretrial and trial proceedings, and that further litigation will lead to
7 inconvenience, disruption, delay, and expense disproportionate to the potential benefits of litigation.
8 (*Id.*) Plaintiff and Plaintiff’s counsel considered the risk and uncertainty of the outcome inherent in
9 any litigation when determining whether this Settlement was the correct option. (*Id.*)

10 **D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT (CMO D.1.a, D.3,**
11 **D.7, and D.10.)**

12 The Settlement covers all current and former non-exempt or hourly paid employees who
13 worked at least one pay period for Defendant in California at any time during the PAGA Period
14 (“Aggrieved Employees”). (Sung Decl., ¶ 8, Exh. 1 - Agreement, § I.2.) The PAGA Period is from
15 April 23, 2023 through March 27, 2025 (the “PAGA Period”). (Agreement, § I.11.)

16 The Gross Settlement Amount of the Settlement is \$315,000.00. (Agreement, § I.8.) The
17 Settlement provides that Plaintiff’s counsel will seek an award of reasonable attorney’s fees of
18 \$105,000.00, which is equivalent to one-third (33 1/3%) of the Gross Settlement Amount, and up to
19 \$20,000.00 in Costs Payment. (Agreement, § III.4.a.) At this time, Plaintiff’s litigation costs are
20 approximately \$13,198.81, including \$91.67 in estimated future costs in filing this Motion and
21 supporting papers (\$75.91) and filing of the Settlement Administrator’s declaration of compliance
22 re settlement administration (\$15.76). (Sung Decl., ¶ 35; **Exh. 6** – Itemized Costs.)

23 The Settlement provides for the following release of PAGA claims: “Plaintiff agrees that
24 upon entry of an Order approving the Settlement and full payment by Defendant of the Gross
25 Settlement Amount, Plaintiff releases all PAGA Released Claims which could have been sought by
26 the Labor Commissioner for the violations identified in Plaintiff’s LWDA Letter against the
27 Released Parties that arose during the PAGA Period. Plaintiff does not release any Aggrieved
28 Employees’ claim for wages or damages. Upon entry of the Order approving the Settlement and

1 judgment entered thereon, as well as full payment by Defendant of the Gross Settlement Amount,
2 Plaintiff and the State of California will be forever barred from pursuing any and all of the PAGA
3 Released Claims that arose during the PAGA Period against the Released Parties.” (Agreement, §
4 III.6.) “PAGA Released Claims” is defined as “any and all claims for civil penalties pursuant to
5 PAGA that were alleged or reasonably could have been alleged based on the facts set forth in the
6 Complaint and/or LWDA Letter which arose during the PAGA Period, including alleged violations
7 of Labor Code §§ 201, 202, 203, 204, 210, 221, et seq., 226, 226.7, 246, 256, 510, 512, 516, 558,
8 558.1, 1174, 1194, 1197, 1197.1, 1198, and 2802, California Industrial Commission Wage Orders,
9 and all claims for attorneys’ fees and costs and statutory interest in connection therewith.”
10 (Agreement, § I.12.) “Released Parties” means “Defendant Pick-Your-Part Auto Wrecking and its
11 officers, directors, employees, and agents.” (Agreement, § I.17.) All claims for civil penalties under
12 the PAGA alleged in the Complaint are alleged in the LWDA Letter. (Sung Decl., ¶ 17.)

13 The Settlement provides the Settlement Administrator will be paid settlement administrator
14 costs not to exceed \$8,250.00. (Agreement, § III.4.b.) After deducting Plaintiff’s counsel’s
15 attorney’s fee and cost awards and payment to the Settlement Administrator, in the amounts
16 approved by the Court, the remainder, called the Net Settlement Amount, will be distributed as 75%
17 to the LWDA and 25% to Aggrieved Employees. (Agreement, § III.5.) The amount estimated in the
18 Net Settlement Amount for the LWDA Payment and the PAGA Aggrieved Employee Payment is
19 **\$188,551.19**. (Sung Decl., ¶ 18.) Accordingly, approximately **\$47,137.80** (25% of the Net
20 Settlement Amount) will be paid to the estimated 865 Aggrieved Employees on a pro-rata basis
21 based on the number of pay periods each Aggrieved Employee worked during the PAGA Period,
22 and the raw average payment to Aggrieved Employees is estimated at **\$54.49**. (*Id.*; see Agreement,
23 § III.5.b.)

24 Defendant will fund the Gross Settlement Amount within 30 days of the Effective Date,
25 which is the date that the Court enters a final order and judgment approving the Settlement.
26 (Agreement, §§ I.5, III.2.) Within 5 business days of the Effective Date, Defendant will provide the
27 Settlement Administrator with a PAGA list of all Aggrieved Employees, including their full name,
28 last known mailing address, social security number, and number of pay periods worked during the

1 PAGA Period or dates of employment. (Agreement, § IV.2.)

2 Upon receipt of the PAGA list, the Settlement Administrator will perform a search on the
3 National Change of Address database to update the Aggrieved Employees' addresses. (Agreement,
4 § IV.3.) Within 21 calendar days of the Settlement being fully funded, the Settlement Administrator
5 will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement and translated
6 into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the
7 75% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to
8 Plaintiff's counsel; and court-approval administration costs to itself. (Agreement, §§ IV.3, IV.5.)

9 Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to
10 the forwarding address affixed thereto. (Agreement, ¶ IV.4.) If no forwarding address is provided,
11 the Settlement Administrator will promptly attempt to determine the correct address, using a skip-
12 trace or other similar search, using the name, address and/or Social Security number of the
13 Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*)
14 Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by
15 checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State
16 Controller's Office under the unclaimed property fund laws in the names of the Aggrieved
17 Employees to whom the checks were issued. (*Id.*; Sung Decl., ¶ 19.)

18 **III. DISCUSSION**

19 **A. AVAILABILITY OF CIVIL PENALTIES**

20 The LWDA and its constituent departments and divisions are authorized to assess and
21 collect civil penalties for specified violations of the Labor Code committed by an employer. With a
22 stated goal of improving enforcement of existing Labor Code obligations, the California Legislature
23 adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an
24 aggrieved employee to initiate a private civil action "on behalf of himself or herself and other
25 current or former employees . . ." (Lab. Code § 2699(a).) The penalties collected in these private
26 civil actions are to be distributed 75 percent to the LWDA and 25 percent to the aggrieved
27 employees. (*Id.* at § 2699(i).) However, before an employee may file an action seeking to recover
28 civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section

1 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code
2 section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of
3 the alleged Labor Code violations, and then waiting a prescribed period of time to permit the
4 LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Caliber*
5 *Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior*
6 *Court* (2006) 142 Cal.App.4th 330.)

7 Here, in compliance with Labor Code section 2699.3, on April 23, 2024, Plaintiff provided
8 notice to the LWDA and Defendant. (Sung Decl., ¶ 11; Exh. 2.) Plaintiff's administrative
9 exhaustion periods expired without the LWDA indicating its intent to investigate the allegations.
10 (*Ibid.*) Accordingly, Plaintiff may proceed with this PAGA representative action.

11 **B. THE SETTLEMENT WARRANTS APPROVAL**

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

14 **1. The Dual Statutory Purposes of Deterrence and Punishment**

15 As a result of this litigation, Defendant has had to hire legal counsel, engage in informal
16 discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the
17 LWDA pursuant to the terms of the Settlement. Not including its own attorneys' fees and costs,
18 Defendant is paying \$315,000.00 to resolve this matter.

19 **2. The Relief is Genuine, Meaningful, and Consistent with the Underlying** 20 **Purpose of the Statute to Benefit the Public (CMO D.2.a.-2.h. and D.6)**

21 Plaintiff's counsel has conducted a thorough investigation into the facts of this case. (Sung
22 Decl., ¶ 20.) Based on the foregoing discovery and on their own independent investigation and
23 evaluation, Plaintiff's counsel is of the opinion that the Settlement is fair, reasonable, and adequate.
24 (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial
25 risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the Settlement is
26 in the best interests of the Aggrieved Employees and the State. (*Id.*) The Settlement avoids the
27 risks, burdens, and the accompanying expense of further litigation. (*Id.*) Although the Parties have
28 engaged in a significant amount of investigation, informal discovery, and employee data analysis,

1 they have not participated in substantial formal discovery procedures, including depositions and
2 expert discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties, as well as the
3 prospect of appeals in the wake of any summary judgment ruling. (*Id.*) As a result, the Parties
4 would incur considerably more attorneys' fees and costs through trial. (*Id.*)

5 Based on Plaintiff's counsel's analysis of the time and payroll records provided by
6 Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum
7 and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendant's disclosures, there
8 were approximately 865 Aggrieved Employees who collectively worked 20,108 pay periods. (*Id.*)
9 Plaintiff's counsel's damages valuation utilizes the initial violation rate penalty of \$100 in
10 analyzing PAGA penalties because, based on Plaintiff's counsel's investigation, Defendant has not
11 been subject to any prior court judgments or Labor Commissioner order placing it on notice of any
12 violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation penalty
13 does not apply. (*Id.*; see *Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157, 1173.)
14 Plaintiff's counsel's valuation of each theory of liability is set forth below.

15 Regular Rate of Pay Violations. Plaintiff alleges that Defendant failed to incorporate non-
16 discretionary incentive compensation into the regular rate of pay for overtime wages, meal period
17 premiums, and paid sick leave wages. (Sung Decl., ¶ 22.) Regular rate of pay, which can change
18 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
19 other things, shift differentials and the per-hour value of any nonhourly compensation the employee
20 has earned." (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554; see also
21 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [meal and rest period premiums
22 to be paid at regular rate of pay]; Lab. Code § 246(l)(1) [paid sick leave to be paid at the regular rate
23 of pay or at a rate based on a 90-day lookback of compensation earned.]

24 Here, Defendant paid Aggrieved Employees three types of incentive compensation: Bonus,
25 Commission, and Incentive Pay. (Sung Decl., ¶ 22.) Based on Plaintiff's counsel and the expert's
26 analysis of the records, Commission and Incentive Pay are factored into the regular rate for
27 overtime purposes but not for meal period premium and paid sick leave, while Bonus is not factored
28 into the regular for overtime, meal period premium, and paid sick leave purposes. (*Id.*) Based on

1 Plaintiff's counsel and the expert's analysis of the payroll records, there were approximately 550
2 pay periods with alleged overtime regular rate violations, 157 pay periods with alleged meal period
3 regular rate violations, and 194 pay periods with alleged paid sick leave regular rate violations. (*Id.*)
4 At \$100 initial penalty per pay period and extrapolated to the date of mediation, PAGA penalties for
5 overtime regular rate is estimated at **\$65,448.97**, for meal period premium regular rate is estimated at
6 **\$18,682.71**, and for paid sick leave regular rate is estimated at **\$23,085.64**. (*Id.*)

7 In response, Defendant argues that the Bonus paycode is for discretionary spot bonuses and
8 need not be factored into the regular rate of pay. (*Id.*) Thus, Plaintiff's damages valuation is
9 excessive because Plaintiff incorrectly assumed Bonus needs to be included in the regular rate of
10 compensation. (*Id.*)

11 Off-the-Clock Work. Plaintiff alleges that he and his coworkers experienced off-the-clock
12 work waiting in line to clock in and out. (Sung Decl., ¶ 23; *see Troester v. Starbucks Corp.* (2018) 5
13 Cal.5th 829, 840, 848 [defining hours worked as "the time during which an employee is subject to
14 the control of an employer" and holding that "[t]he relevant statutes and wage order do not allow
15 employers to require employees to routinely work for minutes off the clock without
16 compensation"].) Specifically, Plaintiff asserts that, at the yard he worked, there were two
17 computers that scores of employees use to clock in and out. (Neito Decl., ¶ 3.) The computers
18 sometimes acted up (1 to 2 times a week), resulting in a 5- to 10-minute wait to clock in and out.
19 (*Id.*) Here, any instances of off-the-clock work would not be reflected in the records. (Sung Decl., ¶
20 23.) Estimating that Class Members worked off the clock waiting in line to clock in and out on
21 approximately one out of every five pay periods (20% violation rate by pay period), and at \$100
22 initial violation rate penalty per pay period, PAGA penalties are estimated at **\$418,120.00**. (*Id.*)

23 In response, Defendant argues that it maintains compliant policies that require all employees
24 to accurately record their hours of work and prohibit off the clock work; that neither Plaintiff nor
25 any Aggrieved Employees made any complaints to Defendant and its executives regarding off-the-
26 clock work waiting to clock in and out; and the payroll records evidence that Defendant paid
27 Aggrieved Employees over 88,000 overtime hours total over \$2.6 million during the PAGA Period.
28 (Sung Decl., ¶ 23.) Thus, Defendant maintains that its policies, practices, and payroll records

1 evidence highly complaint policies and practices, a PAGA trial involving over 800 Aggrieved
2 Employees is not manageable due to due to numerous individualized inquiries as to whether which
3 employees worked off-the-clock and whether Defendant knew or should have known that
4 employees were working off the clock. (*Id.*)

5 Inaccurate Wage Statements. Plaintiff alleges that, as a result of the aforementioned wage
6 violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage
7 statements in violation of Labor Code section 226(a). (Sung Decl., ¶ 24.) Based on Defendant's off-
8 the-clock work theory with a 20% violation rate by pay period, and at \$100 initial violation rate
9 penalty per pay period, PAGA penalties are estimated at **\$418,120.00** (penalties for the regular rate
10 theory are approximately \$88,415.61, which is subsumed under the off-the-clock work theory and
11 not separately assessed). (*Id.*) In response, Defendant contends that this claim is derivative of the
12 foregoing unpaid wage claims and will fail along the underlying wage claims. (*Id.*)

13 Failure to Pay All Wages Due Upon Termination. Plaintiff alleges that, as a result of the
14 aforementioned wage violations, Defendant failed to pay all wages due to formerly employed
15 Aggrieved employees upon their separation of employment in violation of Labor Code sections 201
16 and 202. (Sung Decl., ¶ 25.) At \$100 per former employee for 398 former employees, PAGA
17 penalties are estimated to be **\$39,800.00**. (*Id.*) In response, Defendant contends that this claim is
18 derivative of the foregoing unpaid wage claims and will fail along the underlying wage claims. (*Id.*)

19 Claims for Which No Penalties Are Assessed. Plaintiff does not assess damages for the
20 following theories of liability. First, Plaintiff alleges Defendant failed to provide compliant meal
21 and rest periods. (Sung Decl., ¶ 26.) Based on Plaintiff's counsel and the expert's analysis of time
22 records for over 170,000 shifts and after accounting for meal period premiums paid, there were
23 approximately 1,564 shifts (or 0.90%) with non-compliant meal period punches. (*Id.*) Furthermore,
24 Defendant has compliant policies regarding the provision of meal and rest periods. (*Id.*) In light of
25 the low meal period non-compliance rate, Plaintiff's counsel does not believe penalties for meal and
26 rest period should be assessed. (*Id.*)

27 Second, Plaintiff alleges that Defendant deducted the cost of uniform replacement from his
28 wages. (*Id.*) However, based on Plaintiff's counsel and the expert's analysis of payroll records,

1 there is no evidence of wage deductions for uniforms. (*Id.*) Thus, Plaintiff’s counsel does not assess
2 any penalties for this theory.

3 Third, Plaintiff alleges that Defendant violated IWC Wage Order 7, § 15(C), which
4 provides: “A temperature of not less than 68° F shall be maintained in the toilet rooms, resting
5 rooms, and change rooms during hours of use.” (Sung Decl., ¶ 26.) During informal discovery,
6 Defendant represented that its toilet rooms are temperature-controlled with air conditioning and
7 heating. (*Id.*) Accordingly, Plaintiff’s counsel does not assess any penalties for this theory.

8 Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiff’s
9 counsel estimates Defendant’s maximum exposure for PAGA penalties to be approximately
10 **\$983,257.30**. (Sung Decl., ¶ 27.) However, in addition to Defendant’s defenses on the merits as
11 discussed above, PAGA penalties are subject to discretionary reduction by this Court. (*Id.*) Pursuant
12 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties
13 where “. . . if, based on the facts and circumstances of the particular case, to do otherwise, would
14 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts have
15 affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*
16 (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court’s reduction of PAGA
17 penalties by 90%, citing the employer’s good-faith attempt at complying with the law. (*See also*
18 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction
19 of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK
20 (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part because employer
21 “not aware” of violations].) Here, Defendant argued that based on their compliant policies and
22 practices, the significant amount of overtime paid during the PAGA Period, the high meal period
23 compliance rate, and the hyper-technical nature of the regular rate of pay theories of liability, the
24 Court will significantly reduce any award of PAGA penalties based on its good-faith compliance
25 with the Labor Code. (Sung Decl., ¶ 27.)

26 Taking into account Defendant’s defenses on the merits and the potential for the Court to
27 reduce a PAGA penalty award, Plaintiff’s counsel believes there is a 50% risk factor that the Court
28 will find some of the claims in Defendant’s favor and/or exercise its discretion to reduce the PAGA

1 penalty award. (Sung Decl. at ¶ 28.) Accordingly, applying an 50% discount to the maximum
2 potential recovery, Plaintiff’s counsel believes the realistic recovery at trial on these claims to be
3 **\$491,628.66.**

4 The \$315,000.00 settlement is an excellent result and amounts to “genuine and meaningful”
5 relief “consistent with the underlying purpose of the statute to benefit the public” as it represents
6 approximately **64.07%** of Plaintiff’s realistic recovery. (Sung Decl., ¶ 29; *see Villalobos v.*
7 *Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL
8 12732709, at *5; *see also O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
9 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved
10 Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover
11 anything. (Sung Decl., ¶ 29.)

12 Furthermore, neither Plaintiff nor Plaintiff’s counsel has informed any of the Aggrieved
13 Employees—whether formally or informally, orally or in writing, individually or as a group—of the
14 preparation, filing, or pendency of this Action. (Sung Decl., ¶ 30; Nieto Decl., ¶ 7.) Thus,
15 Aggrieved Employees will not be prejudiced by the dismissal of PAGA representative claims.
16 (Sung Decl., ¶ 30.)

17 **C. THE REQUESTED ATTORNEYS’ FEES AND COST AWARD SHOULD BE**
18 **APPROVED**

19 For the reasons set forth below, Plaintiff requests that the Court approve an attorney’s fee
20 award of **\$315,000.00** and cost award of **\$13,198.81** to Plaintiff’s counsel.

21 **1. Plaintiff’s Counsel Request an Award of Fees Based on the Common**
22 **Fund Method**

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

28 ///

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

11 fairness to the successful litigant, who might otherwise receive no benefit because his
12 recovery might be consumed by the expenses; correlative prevention of an unfair
13 advantage to the others who are entitled to share in the fund and who should bear their
14 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.

15 (*Id.* at p. 111.)

16 Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee
17 awards, which usually involves wading through voluminous and often indecipherable time records.
18 Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities*
19 *Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

20 **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit**
21 **analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–*
22 *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.

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

1 **2. The Requested Fee is in Line with Typical Cases**

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

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

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

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

24 This Settlement is beneficial in that it limits the risk of continued expenses and consumption
25 of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff’s
26 counsel for their decision to assume risk by taking on this matter. (Sung Decl., ¶ 31.) In fact,
27 prosecution of this action involved significant financial risk for Plaintiff’s counsel. (*Id.*) Plaintiff’s
28 counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*)

1 Once Plaintiff's counsel undertook this litigation on behalf of the Aggrieved Employees, they
2 committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees
3 ahead of all other concerns. (*Id.*)

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

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

14 Plaintiff's counsels' experience in wage and hour class and representative actions was
15 integral in evaluating the strengths and weaknesses of the case against Defendant and the
16 reasonableness of this Settlement. Practice in the narrow field of wage and hour litigation requires
17 skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as
18 the procedural law of representative action litigation. Based on these and other factors, Plaintiff's
19 counsel have recently received fee awards of this percentage from the gross recovery, including by
20 this Court. (Sung Decl., ¶ 32.) Therefore, the requested fee award is reasonable and fair.

21 **5. While the Lodestar Method is Not Necessary in Common Fund Cases,**
22 **the Court May Perform a Cross-Check to Award Fees (CMO D.3)**

23 "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases."
24 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar
25 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk,
26 challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an
27 already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far
28 from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of

1 the realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate
2 fees in terms of percentages of the settlement fund or the amounts recovered by the Plaintiff or of
3 an overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in
4 duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7)
5 deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as
6 early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest
7 bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task
8 Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

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

26 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
27 *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 49-50 (approving multiplier of about 2.5); *Coalition*
28 *for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251

1 (approving multiplier of about 12.8). In representative actions such as this one, where the value of
2 the benefit conferred to the representative group “can be monetized with a reasonable degree of
3 certainty,” the court may “adjust the lodestar in comparison to a percentage of the common fund to
4 ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal
5 marketplace in comparable litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

6 Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that “[a]ny
7 employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and
8 costs.” (Lab. Code § 2699(g)(1).) Although PAGA does not provide a specific standard for
9 evaluating attorneys’ fees in connection with a settlement of PAGA claims, California Courts have
10 employed a lodestar analysis and use of multipliers for this purpose. “Where a settlement produces
11 a common fund for the benefit of the entire class, courts have discretion to employ either the
12 lodestar method or the percentage-of-recovery method. . . To guard against an unreasonable result,
13 the Ninth Circuit encourages district courts to “cross-check[] their calculations against a second
14 method. . . . Accordingly, the Court calculates attorneys’ fees in the instant case using the
15 percentage-of-recovery method and then cross-checks its calculations against the lodestar method.”
16 (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL
17 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935,
18 942, 944–45].) The court in *Hermosillo* granted, in part, a plaintiff’s counsel’s unopposed motion
19 for attorneys’ fees and costs in a PAGA-only settlement, wherein 33.33% of the gross settlement
20 fund was requested for fees. (*Hermosillo*, at *1–3.) Accordingly, the Court should find that the
21 circumstances of the present case justify an award of one-third (33 1/3%) of the Gross Settlement
22 Amount for attorneys’ fees. (*Id.*)

23 Here, Plaintiff’s counsel’s current lodestar is **\$67,605.00** which is based on 98.9 hours of
24 attorney time for William Sung and Tiffany Luu at their customary hourly rates. (Sung Decl., ¶¶ 32–
25 33, **Exhs. 5 and 6** - Time and Task Log for William Sung and Tiffany Luu; Luu Decl., ¶ 8.)
26 Plaintiff’s counsel’s requested fee award represents a **1.63** lodestar multiplier, which is well within
27 the range of the lodestar multipliers. (Sung Decl., ¶ 33.) Additionally, Plaintiff’s counsel estimate
28 they will devote no less than 10 hours, although likely more time, to additional tasks, which are

1 hours not included in the foregoing lodestar total. (Sung Decl., ¶ 34.) These additional hours will
2 include time spent to obtain and monitor approval of the Settlement and requested awards, oversee
3 the settlement administration process and distribution of funds, respond to inquiries, and
4 communicate with Plaintiff regarding the case. (*Id.*) Plaintiff's counsel also bear the risk of taking
5 whatever actions are necessary if Defendant fails to pay. The amount of fees requested under the
6 Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the
7 questions involved, the substantial benefit conferred on the Aggrieved Employees and State of
8 California as a result of the Settlement, and the skill displayed by Plaintiff's counsel. Thus, the
9 request for attorneys' fees satisfies a lodestar check.

10 **6. Plaintiff's Counsels' Costs Are Reasonable and Actually Incurred**

11 Plaintiff's counsel are entitled to recover the out-of-pocket costs and expenses they
12 reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir.
13 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's
14 counsel may request reimbursement of costs up to \$20,000.00. (Agreement, § III.4.a.) Plaintiff's
15 counsel seek reimbursement of actual costs in the amount of \$13,198.81, including \$91.67 in
16 estimated future costs in filing this Motion and supporting papers (\$75.91) and filing of the
17 Settlement Administrator's declaration of compliance re settlement administration (\$15.76). (Sung
18 Decl., ¶ 35; Exh. 4.) These expenses were reasonably necessary to the litigation and were actually
19 incurred. Moreover, these expenses are below the maximum amount (\$20,000.00) allowed in the
20 Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs
21 should be reimbursed in full, up to the maximum amount allowed in the Settlement.

22 **D. PLAINTIFF'S INDIVIDUAL SETTLEMENT (CMO D.4.a.-D.4.d.)**

23 Separate from this Settlement, Plaintiff settled his individual, non-PAGA claims with
24 Defendant for \$15,000.00, with \$10,000.00 to be paid to Plaintiff and \$5,000.00 to be paid to
25 Plaintiff's counsel as attorney's fees. (Sung Decl., § 36.) Based on Plaintiff's counsel's calculations,
26 Plaintiff's individual wage and hour damages are \$33,279.23, broken down as (1) off-the-clock
27 work: \$17,550 (\$39 overtime rate x 10 hours per week x 45 weeks); (2) unpaid meal period
28 premiums: \$3,510 (\$26 hourly rate x 3 violations per week x 45 weeks); (3) unpaid rest period

1 premiums: \$3,510 (\$26 hourly rate x 3 violations per week x 45 weeks); (4) unreimbursed
2 cellphone expenses: \$519.23 (\$50/month x 45 weeks); (5) statutory wage statement penalties:
3 \$1,950 (20 semi-monthly pay periods); and (6) statutory waiting time penalties: \$6,240 (\$26 hourly
4 rate x 8 hours x 30 days) (*Id.*; *see also* Nieto Decl., ¶ 3.) Thus, Plaintiff’s Individual Settlement
5 Payment is approximately 60% of Plaintiff’s potential recovery and consistent with the recovery
6 ratio of the PAGA claims. (Sung Decl., § 34.) Furthermore, because Plaintiff is receiving
7 consideration for settlement of his individual, non-PAGA claims, he is not otherwise seeking a
8 service award or enhancement payment for his services as the PAGA representative. (*Id.*)

9 **E. THE COURT SHOULD APPROVE THE SETTLEMENT**
10 **ADMINISTRATION FEES (CMO D.8.a-D.8.b.iv.)**

11 Plaintiff’s counsel obtained administration bids from two administrators, and the Parties
12 jointly selected Phoenix Settlement Administrators as the neutral entity to administer this
13 Settlement based on its bid of \$8,250.00, which was the lowest bid. (Sung Decl., ¶ 37; *see also*
14 Declaration of Jodey Lawrence in Support of Plaintiff’s Motion for Approval of PAGA Settlement
15 [“Admin. Decl.”], ¶ 16, Exh. B – Administrator Bid.)

16 Pursuant to the terms of the Settlement, the fees and costs of the Settlement Administrator,
17 are to be paid out of the common fund. (Agreement, § III.4.B.) The settlement administration fees
18 are based on a flat-sum amount of \$8,250.00. (*Id.*; Admin. Decl., ¶ 16, Exh. B.) The Settlement
19 Administrator’s duties include, but are not limited to, receiving and analyzing the Aggrieved
20 Employee list, processing Aggrieved Employees’ names and addresses against the National Change
21 of Address database (“NCOA”) prior to mailing, setting up and managing a Qualified Settlement
22 Fund (“QSF”) Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees,
23 disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiff’s
24 counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter,
25 tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the
26 Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶ 12-15, Exh.
27 B; Agreement, §§ IV.1-7.) All of these duties are included in the agreed-upon flat fee of \$8,250.00.
28 Thus, the Administrator’s fees should be approved.

1 **F. PLAINTIFF’S COUNSEL GAVE NOTICE OF THE PAGA SETTLEMENT**
2 **TO THE LWDA AND FINAL ACCOUNTING (CMO D.1.c. and D.11)**

3 On April 28, 2025, Plaintiff’s counsel caused a copy of the Motion for Approval of PAGA
4 Settlement, supporting declarations, and the fully executed Agreement to be uploaded to the
5 LWDA's website. (Sung Decl., ¶ 38, **Exh. 7**-LWDA Upload Confirmation.)

6 The Proposed Judgment and Order states the following in Paragraph 14: “The Court sets a
7 Final Accounting (Nonappearance) hearing on April 16, 2026 in Department 1 of the above-entitled
8 Court. Plaintiff is ordered to file a final report and declaration by the Settlement Administrator
9 regarding settlement distribution no later than 5 court days prior to the Hearing.” (Sung Decl., ¶ 39.)

10 **IV. CONCLUSION**

11 For the foregoing reasons, Plaintiff respectfully request that the Court grant approval of the
12 proposed Settlement and sign the Proposed Judgment and Order submitted herewith.

13
14 DATED: April 28, 2025

Respectfully submitted,

15 **JUSTICE FOR WORKERS, P.C.**

16
17 By: 

18 _____
19 William C. Sung
20 Tiffany L. Luu
21 Attorneys for Plaintiff JORGE NIETO
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