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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 SELENA EVINS, individually, and on behalf of
13 all others similarly situated,

14 Plaintiff,

15 v.

16 PEPPERBUSH HOLDINGS, LLC, a limited
17 liability company; and DOES 1 through 10,
inclusive,

18 Defendants.

Case No.: 37-2024-00023225-CU-OE-CTL

[Assigned to Hon. Carolyn Caietti, Dept. C-70]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO APPROVE PAGA
SETTLEMENT**

[Filed with (1) the Declaration of Kane
Moon, (2) the Declaration of Sean Hartranft,
(3) [Proposed] Order, and (4) [Proposed]
Judgment]

PAGA APPROVAL HEARING:

Date:

Time:

Dept.: C-70

Action Filed: May 20, 2024

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on [REDACTED], 2025, at [REDACTED] in Department C-70 of this
3 Court located at the Hall of Justice, 330 West Broadway, Fifth Floor, San Diego, California 92101,
4 Plaintiff Selena Evins (“Plaintiff”) will move the Court, pursuant to California Labor Code sections
5 2698, *et seq.*, for an Order:

6 1. Approving the settlement of this representative action in the form agreed to by
7 Plaintiff and Defendant Pepperbush Holdings, LLC in the PAGA Settlement Agreement (the
8 “PAGA Settlement”);

9 2. Appointing Plaintiff’s Counsel Moon Law Group, PC as PAGA Counsel, for
10 settlement purposes only, and approving PAGA Counsel’s application for attorneys’ fees and
11 litigation costs;

12 3. Appointing Apex Class Action Administration as the Administrator, and approving
13 payment for administration costs;

14 4. Approving the release of PAGA claims by Plaintiff and the Aggrieved Employees
15 in exchange for the settlement payments;

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

18 6. Dismissing this action with prejudice;

19 7. Entering Judgment approving the PAGA Settlement; and

20 8. Without affecting the finality of the Judgment, reserving continued jurisdiction
21 over the Parties, Action, and PAGA Settlement solely for purposes of (i) enforcing the PAGA
22 Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such
23 post-Judgment matters as are permitted by law.

24 This Motion will be based upon this notice, the attached Memorandum of Points and
25 Authorities, the supporting declarations, and exhibits thereto filed concurrently herewith, the records
26 and files in this action, and any other further evidence or argument that the Court may properly
27 receive at or before the hearing.

1 Dated: April 16, 2025

Respectfully submitted,

2 **MOON LAW GROUP, PC**

3
4 By: _____

Kane Moon
Allen Feghali
Lilit Ter-Astvatsatryan
S. Emily Grams

7 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Selena Evins (“Plaintiff”) seeks approval of a proposed non-reversionary
4 \$125,000.00 gross settlement of claims alleged against Defendant Pepperbush Holdings, LLC
5 (“Defendant”) (together with Plaintiff, the “Parties”) for civil penalties pursuant to the California
6 Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). After a full day of
7 mediation with experienced neutral mediator Steven Rottman, Esq., the Parties reached a
8 settlement and thereafter executed a PAGA Settlement Agreement (the “PAGA Settlement” or
9 “Settlement”). (A true and correct copy of the PAGA Settlement is attached as Exhibit 1 to the
10 Declaration of Kane Moon in Support of Plaintiff’s Motion to Approve PAGA Settlement
11 [hereinafter “Moon Decl.”] submitted concurrently herewith.) Pursuant to Labor Code section
12 2699, subdivision (1)(2), Plaintiff now files this unopposed motion, seeking an order approving
13 the proposed PAGA Settlement.

14 The proposed Settlement resolves the PAGA claim alleged in this action which was based
15 on Defendant’s alleged failure to pay all minimum and overtime wages, failure to provide meal
16 and rest breaks, failure to indemnify necessary business expenses, failure to pay all wages owed
17 at the time of termination, and failure to provide accurate wage statements. The Settlement
18 resolves these claims on behalf of Plaintiff, the California Labor and Workforce Development
19 Agency (the “LWDA”), and all current and former California hourly-paid, non- exempt employees
20 of Defendant employed at any time from April 24, 2024 to February 27, 2025 (“Aggrieved
21 Employees”).

22 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
23 statute, which states that the “court shall review and approve any penalties sought as part of a
24 proposed settlement agreement pursuant to this part.” (Lab. Code § 2699(1)(2).) In deciding
25 whether to grant approval of the proposed Settlement, the primary issues to be decided is whether
26 the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA
27 penalties to which the parties have agreed provide “genuine and meaningful” relief, “consistent
28

1 with the underlying purpose of the statute to benefit the public,” and whether the penalties are
2 reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sunrise Farm*
3 *LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also*
4 *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

11 The value achieved by the Settlement may be gleaned from the fact that the LWDA and
12 estimated 143 Aggrieved Employees will receive no less than \$52,342.50, which, pursuant to the
13 operative statute, shall be allocated as “75% to the [LWDA] and 25% to the aggrieved employees.”
14 (Lab. Code § 2699(i).¹) This is a significant recovery, not only because further litigation may have
15 resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant,
16 the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on
17 a representative basis at all due to the potential manageability issues and the current state of the
18 law. For these reasons, as set forth more fully herein, Plaintiff respectfully requests this Court
19 enter the proposed order and judgment submitted herewith.

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

21 **A. Plaintiff’s Claims and Procedural Background**

22 Defendant is a nursing home in San Diego, California that provides health services to
23 patients. (Moon Decl., ¶ 3.) Plaintiff worked for Defendant in California as Nurse from
24

25 ¹ On July 1, 2024, new legislation was enacted to amend PAGA in several respects,
26 including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288),
27 § 1, eff. Jul. 1, 2024.) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved
28 employee split. (Lab. Code § 2699(m).) However, because Plaintiffs’ respective PAGA matters
were initiated prior to June 19, 2024, any civil penalties recovered in this action will be split 75%
to the LWDA and 25% to Aggrieved Employees as the recent PAGA amendments do not apply
retroactively. (Lab. Code § 2699(v)(1).)

1 approximately December 2022 to May 2023 and was classified as non-exempt throughout her
2 employment. (*Id.*) Plaintiff contends both she and her former coworkers were subjected to the
3 same unlawful labor practices during their employment by Defendant, including failure to pay
4 wages for all hours worked. (*Id.*)

5 Plaintiff's claim for unpaid wages stems is based on allegations of Defendant's pattern and
6 practice of 1) not paying for off-the-clock work; 2) instituting an invalid Alternative Workweek
7 Schedule ("AWS"), and 3) not incorporating all remuneration in the regular rate of pay for
8 purposes of paying overtime and sick pay. (*Id.* at ¶ 4.) Plaintiff's meal and rest period claims are
9 based on allegations that due to the nature of their work and Defendant's employment practices,
10 Plaintiff and other employees regularly experienced missed, untimely, or interrupted lunches and
11 breaks. (*Id.*) Plaintiff also alleges she and Aggrieved Employers were required to purchase their
12 own face makes, scrubs, work shoes, compression socks, hand sanitizer, thermometers, and blood
13 pressure monitors without reimbursement from Defendant. (*Id.*) Moreover, Plaintiff alleges she
14 and Aggrieved Employees did not receive all wages owed at the time of termination and did not
15 receive accurate itemized wage statements. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable
16 for civil penalties under PAGA. (*Id.*)

17 On May 19, 2024, Plaintiff submitted a PAGA notice of alleged Labor Code violations to
18 Defendant and the LWDA. (*Id.* at ¶ 5, Exh. 2.) Because of Defendant's alleged violations of various
19 provisions of the Labor Code, Plaintiff filed a class action on May 20, 2024, which alleges
20 Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime
21 compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods,
22 (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at
23 termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair
24 business practices. (*Id.* at ¶ 5.)

25 On August 15, 2024, Plaintiff filed a First Amended Representative Action Complaint (the
26 "Operative Complaint"), adding a cause of action against Defendant for civil penalties pursuant under
27 the PAGA. (*Id.* at ¶ 6.) Due to an arbitration agreement between Plaintiff and Defendant, which
28

1 includes a class action waiver, Plaintiff requested dismissal of the class allegations against Defendant
2 without prejudice. (*Id.*) On March 3, 2025, the Court granted Plaintiff's request and dismissed the
3 class allegations. (*Id.*) The Operative Complaint thus only alleges a cause of action for civil penalties
4 under PAGA. (*Id.*) Plaintiff's administrative exhaustion period expired without the LWDA
5 indicating its intent to investigate Plaintiff's allegations. In compliance with Labor Code section 2699
6 (I)(1), Plaintiff submitted to the LWDA a file-stamped copy of the Operative Complaint. (*Id.*)

7 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
8 with the laws identified in the Operative Complaint, and denies liability for any of the causes of
9 action alleged. (*Id.* at ¶ 7.)

10 **B. Discovery and Investigation**

11 Following the filing of Plaintiff's complaint, the Parties met and conferred regarding an
12 agreement to mediate the action and further agreed to a protocol for an informal exchange of
13 documents and information before the mediation. (*Id.* at ¶ 8.) Prior to mediation, the Parties
14 engaged in informal discovery, including an exchange of sample data and demographic
15 information which allowed the Parties to meaningfully mediate this matter. (*Id.*) Specifically, prior
16 to mediation, Defendant provided the approximate number of Aggrieved Employees and pay
17 periods within the relevant period, documents regarding Defendant's written employment policies,
18 Plaintiff's personnel file and her time and payroll records, and a statistically significant sample of
19 time and payroll records of the Aggrieved Employees. (*Id.*)

20 After reviewing and analyzing documents regarding Defendant's wage and hour policies
21 and practices, the sample time and pay records, and other information provided by Defendant and
22 Plaintiff, Plaintiff's Counsel was able to evaluate the probability of success on the merits and
23 Defendant's maximum and risk-adjusted monetary exposure. (*Id.* at ¶ 9.) Plaintiff's Counsel
24 retained an expert to analyze the sample records produced and prepare a damage analysis prior to
25 mediation. (*Id.*) The sample of time and pay records contained 1,163 pay periods that employees
26 worked during the PAGA Period (representing approximately 14% of total pay periods worked in
27 the PAGA Period), which allowed the expert to prepare an analysis with a high degree of certainty.

(*Id.*) In conjunction with their extensive factual investigation, Plaintiff’s Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff’s and Plaintiff’s Counsel’s familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the PAGA Settlement. (*Id.*)

C. Settlement Negotiations

On January 27, 2025, the Parties participated in private mediation with Steven Rottman, Esq., an experienced, professional, neutral, class action and PAGA mediator. (*Id.* at ¶ 10.) The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Specifically, Defendant asserted that it properly paid its employees for all wages, that it does not allow its employees to work off-the-clock, that it did not fail to incorporate any remuneration into the regular rate as such remunerations were discretionary, that many meal periods and rest breaks were taken, and where a violation appears, it was a result of an employee voluntarily choosing to forego a meal period or rest break, that it reimbursed its employees for all necessary business expenses incurred, and that Plaintiff’s allegations are not representative but require individual proof. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement, the material terms of which are encompassed within the PAGA Settlement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and her counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this PAGA Settlement was the correct option. (*Id.*)

1 **D. Key Terms of the Proposed PAGA Settlement**

2 Under the Settlement, Defendant will pay an all-inclusive, non-reversionary amount of
3 at least \$125,000.00 to resolve this litigation. (PAGA Settlement, ¶ 3.1.) In compliance with
4 California Labor Code section 2699, subdivision (l)(2), Plaintiff's Counsel submitted to the
5 LWDA a notice of settlement, a copy of the proposed PAGA Settlement, and the instant moving
6 papers. (*Id.* at ¶ 12, Exh. 3.) The Settlement's key terms include:

- 7 1. Aggrieved Employee: all current and former California hourly-paid, non- exempt
8 employees of Defendant employed at any time from April 24, 2024 to February 27,
9 2025. (*Id.* at ¶ 1.4.)
- 10 2. PAGA Counsel Fees Payment: 33.33% of the Gross Settlement Amount, the amount
11 allocated to PAGA Counsel for their reasonable fees incurred to prosecute the Action
12 (currently estimated to be \$41,662.50). (*Id.* at ¶¶ 1.20, 3.2.1.)
- 13 3. PAGA Counsel Litigation Expenses Payment: not more than \$25,000.00, the amount
14 allocated to PAGA Counsel for reimbursement of their reasonable expenses incurred to
15 prosecute the Action. (*Id.* at ¶ 1.20, 3.2.1.) At this time, Plaintiff's Counsel's costs
16 are \$25,403.89. (*Id.*; Moon Decl., ¶ 17, Exh. 4.)
- 17 4. Administration Expenses Payment: not to exceed \$5,995.00, the amount allocated to the
18 Administrator from the Gross Settlement Amount for reimbursement of its reasonable
19 fees and expenses, in accordance with the bid submitted to the Court in connection with
20 the approval of this Settlement. (PAGA Settlement, ¶ 1.3, 3.2.2.) The proposed
21 Administrator, Apex Class Action Administration provided an estimate of
22 \$5,995.00 for its costs. (Moon Decl., ¶ 18, Exh. 5.)
- 23 5. PAGA Penalties PAGA Penalties in the amount of \$125,000.00 less the PAGA
24 Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and
25 Administration Expenses Payment as approved by the Court, are to be paid from
26 the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment
27 and 25% allocated to the Individual PAGA Payments. (PAGA Settlement, ¶ 3.2.3.)
28

- 1 6. Individual PAGA Payments: The Administrator will calculate each Individual
2 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
3 of PAGA Penalties by the total number of PAGA Pay Periods worked by all
4 Aggrieved Employees and (b) multiplying the result by each Aggrieved
5 Employee's PAGA Pay Periods. (*Id.* at ¶ 3.2.3.1.)
- 6 7. Tax Treatment: The Administrator will report the Individual PAGA Payments on
7 IRS 1099 Forms. (*Id.*) Aggrieved Employees assume full responsibility and liability
8 for any taxes owed on their Individual PAGA Payment. (*Id.*)
- 9 8. Escalator Clause: Based on a review of its records to date, Defendant estimates
10 there are approximately 143 Aggrieved Employees who worked a total of
11 approximately 8,300 pay periods ("PAGA Pay Periods"). (*Id.* at ¶ 4.1.) If the
12 number of pay periods worked by Aggrieved Employees during the PAGA Period
13 exceeds 8,300 by more than 10% (i.e. exceed 9,130 pay periods) then, the Gross
14 Settlement Amount will increase proportionate to the pay period increase beyond
15 the threshold (i.e., if number of pay periods exceeds 9,130 by 1%, the Gross
16 Settlement Amount will increase by 1%). (*Id.*)
- 17 9. Unclaimed Funds: For any Aggrieved Employee whose Individual PAGA Payment
18 check is uncashed and canceled after the void date (not less than 180 days after the
19 date of mailing) the Administrator shall transmit the funds represented by such
20 checks to the California Controller's Unclaimed Property Fund in the name of the
21 Aggrieved Employee. (*Id.* at ¶ 4.4.1, 4.4.3.)
- 22 10. Funding: Defendant shall fully fund the Gross Settlement Amount by transmitting
23 the funds to the Administrator no later than 21 days after the Effective Date. (*Id.* at
24 ¶ 4.3.) "Effective Date" means the date when the Court signs the approval order
25 and judgment. (*Id.* at ¶ 1.11.)

26 After reviewing the facts, strengths, and weaknesses of the case, the risks and delays posed
27 by further litigation, and Plaintiff's Counsel's own prior litigation experience, Plaintiff's Counsel
28

1 believe the proposed recovery for each Aggrieved Employee is fair, reasonable, and adequate, taking
2 into consideration the amounts received in other PAGA actions, the risks inherent in litigation of
3 this genre, and the reasonable tailoring of each Aggrieved Employee’s claim to the settlement award
4 he or she will receive. (Moon Decl., ¶¶ 22–32.) Defendant vigorously contested liability and
5 damages. (*Id.* at ¶¶ 7, 23.) Further, based on the settlement negotiations, which were hard-fought
6 and conducted in good faith and at arms’ length between attorneys with substantial experience
7 litigating class and representative actions, the Settlement was the product of a non-collusive
8 settlement process in which the Parties were forced to make significant compromises in the interest
9 of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 10.)

10 **III. DISCUSSION**

11 **A. Availability of Civil Penalties**

12 The LWDA and its constituent departments and divisions are authorized to assess and
13 collect civil penalties for specified violations of the Labor Code committed by an employer.
14 With a stated goal of improving enforcement of existing Labor Code obligations, the California
15 Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an
16 alternative, an aggrieved employee to initiate a private civil action “on behalf of himself or
17 herself and other current or former employees . . .” (Lab. Code § 2699(a).) The penalties
18 collected in these private civil actions are to be distributed 75 percent to the LWDA and 25
19 percent to the aggrieved employees. (*Id.* at § 2699(i).) However, before an employee may file
20 an action seeking to recover civil penalties for violations of any of the Labor Code provisions
21 enumerated in Labor Code section 2699.5, he or she must comply with the Act’s administrative
22 procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing
23 notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting
24 a prescribed period of time to permit the LWDA to investigate and to decide whether to cite
25 the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v.*
26 *Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006)
27 142 Cal.App.4th 330.)

1 Here, in compliance with Labor Code section 2699.3, Plaintiff provided notice to the
2 LWDA on May 19, 2024. (Moon Decl., ¶ 5, Exh. 2.) Plaintiff’s administrative exhaustion
3 period has since expired, and the LWDA did not indicate its intent to investigate Plaintiff’s
4 allegations. (*Id.*) Accordingly, Plaintiff may proceed with her PAGA representative action.

5 **B. The Settlement Warrants Approval**

6 Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(1).) Here,
7 the circumstances weigh heavily in favor of approval, as explained below.

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

9 As a result of this litigation, Defendant has had to hire legal counsel, engage in informal
10 discovery, and participate in mediation. Defendant is also now having to pay civil penalties to
11 the LWDA pursuant to the terms of the PAGA Settlement. Not including its own attorneys’
12 fees and costs, Defendant is paying \$125,000.00 to resolve this matter, and the release obtained
13 as a result of this Settlement does not preclude the Aggrieved Employees from seeking remedies
14 based on any individual claims they may have against Defendant or the other Released Parties.
15 (*See* PAGA Settlement, ¶ 5.2.)

16 **2. The Relief is Genuine, Meaningful, and Consistent with the**
17 **Underlying Purpose of the Statute to Benefit the Public**

18 The provisions of the California Labor Code triggering PAGA penalties in this case
19 include Labor Code sections 203 and 226(a). (Moon Decl., ¶¶ 4–5, Exh. 2; Lab. Code §§ 203,
20 226(a).) PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e).)
21 Labor Code section 2699(e)(2) states, “a court may award a lesser amount than the maximum
22 civil penalty amount specified by this part if, based on the facts and circumstances of the
23 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
24 or confiscatory.” (Lab. Code § 2699(e)(2).) Accordingly, it is entirely possible that even if
25 Plaintiff would be successful at trial, assuming she is able to defeat the manageability issues
26 presented by the number of Aggrieved Employees in this action, Plaintiff may still be awarded
27 less than what was obtained through this Settlement.
28

1 Plaintiff's Counsel have conducted a thorough investigation into the facts of this case.
2 (*Id.* at ¶ 30.) Based on the foregoing discovery and on their own independent investigation and
3 evaluation, Plaintiff's Counsel are of the opinion that the Settlement is fair, reasonable, and
4 adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant
5 delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits,
6 the PAGA Settlement is in the best interests of the Aggrieved Employees. (*Id.*) The PAGA
7 Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.*
8 at ¶ 32.) Although the Parties have engaged in a significant amount of investigation, informal
9 discovery, and employee data analysis, they have not participated in depositions and expert
10 discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties as well as the
11 prospect of appeals. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees
12 and costs through trial. (*Id.*)

13 Based on Plaintiff's Counsel's analysis of the time, payroll, and additional records and
14 information provided by Defendant, on Plaintiff's expert's analysis of the sample time and
15 payroll records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel
16 evaluated Defendant's maximum and risk-adjusted potential exposure. (*Id.* at ¶ 22.) Although
17 Plaintiff's expert's analysis revealed that the time and payroll records supported several
18 violations by Defendant, the records themselves did not provide overwhelming evidence to
19 support the case on a representative basis. (*Id.*)

20 Based on a review of its records to date, Defendant estimates there are approximately
21 143 Aggrieved Employees who worked a total of approximately 8,300 PAGA Pay Periods.
22 (PAGA Settlement, ¶ 4.1.) Prior to mediation, Plaintiff's expert analyzed the sample time and
23 payroll records Defendant had produced and accordingly, was able to confirm Plaintiff's
24 allegations. (Moon Decl., ¶ 23.) Plaintiff's expert found 729 unique meal period violations
25 (5,173 when extrapolated to all Aggrieved Employees) demonstrated by a review of the records,
26 resulting in an 8.6% violation rate. (*Id.*) However, the expert's analysis also revealed that
27 certain claims were not as strong as originally believed. (*Id.*) For example, Plaintiff's expert
28

1 found that after accounting for meal break waivers, there were only 1,873 unique meal break
2 violations when extrapolated to all Aggrieved Employees, resulting in an 3.1% violation rate.
3 (*Id.*) Plaintiff's expert also found that only 0.3% of pay periods contained payments for
4 overtime pay and additional compensation, and only 0.6% of pay periods contained payments
5 for sick pay and additional compensation, resulting in a total minimal exposure of \$371 for the
6 regular rate claim. (*Id.*) Additionally, Plaintiff's expert found that only 6.2% of pay periods had
7 unpaid overtime, assuming Defendant had an invalid AWS. (*Id.*) Moreover, many of Plaintiff's
8 allegations, such as the off-the-clock and reimbursement claims, would largely need to be
9 supported by declarations from Aggrieved Employees, and obtaining such declarations
10 potentially would reveal that each Aggrieved Employee had a different experience. (*Id.*) The
11 individualized nature of employees' employment experience and the numerosity of employees
12 affected present significant risk with manageability and proof on the merits. (*Id.*)

13 Assuming a \$100 civil penalty per pay period (total 8,300 estimated pay periods),
14 Defendant's maximum potential exposure in this Action for civil penalties under PAGA is
15 estimated to be \$830,000.00. (*Id.* at ¶ 24.) Although Plaintiff's Counsel believe there is merit
16 to Plaintiff's allegations, we acknowledge a legitimate controversy exists as to each allegation.
17 (*Id.*) In other words, based on Plaintiff's Counsel's investigation and analysis, the maximum
18 exposure did not comport with the reasonable exposure that Defendant faced. (*Id.*) Specifically,
19 Defendant argued that it did not allow its employees to work off-the-clock and that it did not
20 fail to compensate any employee for any off-the-clock work. (*Id.*) Plaintiffs' expert also found
21 that Defendant's exposure due to its alleged invalid AWS and failure to incorporate
22 remuneration into the regular rate was minimal. (*Id.*) Defendant also argued that it reimbursed
23 its employees for any necessary business expenses incurred. (*Id.*) Defendant maintains its
24 compliance with all its meal and rest period obligations, and that any missed lunches or breaks
25 was solely the result of employees' voluntary choice. (*Id.*) Defendant also argued that many
26 Aggrieved Employees waived their meal breaks and to the extent there were any violations,
27 Defendants paid meal premium payments. (*Id.*) To the employees who received wage
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1 statements that were allegedly inaccurate, Defendant asserts they suffered no actual damage or
2 harm as a result. (*Id.*) Based on the foregoing and in consideration of the Due Process concerns
3 related to penalizing Defendant disproportionately to the amount of damages at issue, and the
4 discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes,
5 that a violation occurred in approximately one-fourth of all pay periods resulting in a **realistic**
6 **(risk-adjusted) exposure of \$207,500.00** (\$830,000.00 / 4). (*Id.* at ¶ 28.)

7 The **\$125,000.00** settlement is an excellent result and amounts to “genuine and meaningful”
8 relief “consistent with the underlying purpose of the statute to benefit the public” **as it represents**
9 **approximately 60% of Defendant’s realistic recovery.** (*Id.* at ¶ 28; *Villalobos v. Calandri*
10 *Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709,
11 at *5; *see also O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110,
12 1135.) This is an excellent result, particularly because, under the PAGA Settlement, Aggrieved
13 Employees will receive timely, guaranteed relief and will avoid the risk of not being able to
14 recover anything. (Moon Decl., ¶ 28.)

15 After the Administration Expenses Payment, PAGA Counsel Fees Payment, and PAGA
16 Counsel Litigation Expenses Payment, the amount estimated as PAGA Penalties for the LWDA
17 and Aggrieved Employees is at least **\$52,342.50**.² The PAGA Penalties will be split with 75%
18 going to the LWDA and 25% going to Aggrieved Employees on a pro rata basis in Individual
19 PAGA Payments. (PAGA Settlement, ¶ 3.2.3.) Each Aggrieved Employee will receive payment
20 directly proportional to the number of PAGA Pay Periods the Aggrieved Employee worked
21 within the PAGA Period. (*Id.* at ¶ 3.2.3.1.) Accordingly, at least **\$39,256.88** (75% * \$52,342.50)
22 will be available to the LWDA and **\$13,085.63** (25% * \$52,342.50) will be available to the
23 estimated 143 Aggrieved Employees, which results in an average Individual PAGA Payment
24 of **\$91.51** (\$13,085.63 / 143 Aggrieved Employees) and a Pay Period value of **\$1.58**

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26
27 ² The PAGA Penalties amount is \$125,000.00 minus: \$25,000.00 for Plaintiff’s Counsel’s
28 litigation costs, \$41,662.50 for Plaintiff’s Counsel’s attorneys’ fees, and \$5,995.00 for
administration costs. (PAGA Settlement, ¶ 3.2.3.)

1 (\$13,085.63 / 8,300 Pay Periods) for each of the 8,300 estimated Pay Periods. (Moon Decl., ¶
2 29.)

3 **C. The Requested Attorney's Fees and Cost Award Should Be Approved**

4 Under the PAGA Settlement, subject to the Court's approval, Defendant agree to pay
5 Plaintiff's Counsel's reasonable attorneys' fees in amount up to 33.33% of the Gross Settlement
6 Amount, which is currently estimated to be \$41,662.50. (PAGA Settlement, ¶ 3.2.1.)
7 Additionally, Defendant agrees to pay Plaintiff's Counsel's actual litigation costs up to
8 \$25,000.00. (*Id.*) To date, Plaintiff's Counsel have incurred \$25,403.89 in actual litigation
9 costs. (Moon Decl., ¶ 17, Exh. 4.)

10 **1. Plaintiff's Counsel Request an Award of Fees Based on the**
11 **Common Fund Method**

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

18 Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of
19 recovery/common fund" theory. (Moon Decl., ¶ 59.) The purpose of this approach is to "spread
20 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not
21 bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
22 In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who
23 expends attorneys' fees in winning a suit which creates a fund from which others derive benefits,
24 may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.)
25 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California
26 Supreme Court recognized that the common fund doctrine has been applied "consistently in
27 California when an action brought by one party creates a fund in which other persons[] are entitled
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1 to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying the common fund doctrine
2 include:

3 fairness to the successful litigant, who might otherwise receive no
4 benefit because his recovery might be consumed by the expenses;
5 correlative prevention of an unfair advantage to the others who are
6 entitled to share in the fund and who should bear their share of the
7 burden of its recovery; encouragement of the attorney for the
8 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.

9 (*Id.* at p. 111.):

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

14 **This court is compelled to ask, “Is this process necessary?” Under a cost-benefit**
15 **analysis, the answer would be a resounding, “No!”** Not only do the *Lindy* and
16 *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.

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

24 2. The Requested Fee Is in Line with Typical Cases

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

Here, Plaintiff requests attorneys’ fees equal to 33.33% 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. (*Compare* PAGA Settlement, ¶ 3.2.1, with *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.”].) Accordingly, Plaintiff respectfully requests that the Court approve attorneys’ fees as negotiated by the Parties.

3. The Matter Involves a Fee Shifting Provision

Labor Code section 2699 provides for the recovery reasonable attorney’s fees as well as costs of suit. (Lab. Code § 2699(g)(1).) Under this provision, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were larger than the total recovery for the Aggrieved Employees at the conclusion of this case. (*Id.*)

This PAGA Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff’s Counsel. (Moon Decl., ¶¶ 61–66.) Plaintiff’s Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns. (*Id.* at ¶ 66.)

1 **4. The Experience, Reputation, and Ability of Plaintiff’s Counsel**
2 **Support the Requested Fee Award**

3 As demonstrated by their past experience in pursuing class and representative actions
4 on behalf of employees, Plaintiff’s Counsel possess considerable expertise in litigating class
5 action and representative matters. (*Id.* at ¶¶ 34–56.) Plaintiff’s Counsel have been involved as
6 lead counsel or co-counsel in a multitude of class and representative actions resulting in
7 beneficial results to class members and aggrieved employees in California. (*Id.*) Because it is
8 reasonable to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and
9 experience, Plaintiff’s Counsel’s requested fee award is supported here.

10 Plaintiff’s Counsel’s experience in wage and hour class and representative actions was
11 integral in evaluating the strengths and weaknesses of the case against Defendant and the
12 reasonableness of this Settlement. (*Id.* at ¶ 57.) Practice in the narrow field of wage and hour
13 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state
14 and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 55.) Based
15 on these and other factors, Plaintiff’s Counsel have frequently received fee awards of this
16 percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 38, 43, 49.)
17 Therefore, the requested fee award is reasonable and fair.

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

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

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

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

25 Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that
26 “[a]ny employee who prevails in any action shall be entitled to an award of reasonable
27 attorney’s fees and costs.” (Lab. Code § 2699(g)(1).) Although, PAGA does not provide a
28

specific standard for evaluating attorneys’ fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. “Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to “cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys’ fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method.” (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].)

Here, Plaintiff’s Counsel’s current lodestar is *no less than \$65,295.00*, which is based on approximately **92 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶ 60.) Accordingly, the fee request represents **a negative multiplier of roughly 0.64**. (*Id.* at ¶ 63(c).) Additionally, Plaintiff’s Counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (*Id.* at ¶ 61.) These additional hours will include time spent to obtain and monitor approval of the PAGA Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.*) The amount of fees requested under the Settlement is warranted based on the contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff’s Counsel. Thus, the request for attorneys’ fees satisfies a lodestar check.

6. Plaintiff’s Counsel’s Costs Are Reasonable

Plaintiff’s Counsel are entitled to recover the out-of-pocket costs and litigation expenses they reasonably incurred in investigating, prosecuting, and settling this case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Under the proposed PAGA Settlement, Plaintiff’s

Counsel may request reimbursement of costs up to \$25,000.00. (PAGA Settlement, ¶ 3.2.1.) As of the drafting of this motion, Plaintiff’s Counsel have incurred \$25,403.89 in actual costs but seek reimbursement for the maximum allowed under the PAGA Settlement, \$25,000.00. (Moon Decl., ¶ 67, Exh. 5.) These expenses were reasonably necessary to the litigation and were actually incurred by Plaintiff’s Counsel. (*Id.* at ¶ 67.) Therefore, costs should be reimbursed up to the maximum amount allowed under the PAGA Settlement.

IV. CONCLUSION

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

Dated: April 16, 2025

Respectfully submitted,

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