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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 CHINYERE EZEKWESILI, an individual and  
11 on behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 VERMONT HEALTHCARE CENTER, LLC,  
a California limited liability company; and  
15 DOES 1 through 50,

16 Defendants.

Case No.: 24STCV17871

[Assigned for All Purposes to:  
Hon. Randolph M. Hammock, Dept. 49]

**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: June 11, 2025

TIME: 8:30 a.m.

DEPT: 49

RESERVATION ID: 563013056719

Action Filed: July 17, 2024

Trial Date: Not Set

1 TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:  
2 PLEASE TAKE NOTICE that on June 11, 2025, 8:30 a.m. in Department 49 of the  
3 Superior Court of the State of California for the County of Los Angeles, Stanley Mosk Courthouse,  
4 located at 111 North Hill Street Los Angeles, CA 90012, before the Honorable Randolph M.  
5 Hammock, Judge presiding, Plaintiff CHINYERE EZEKWESILI (“Plaintiff”) will move the  
6 Court, pursuant to California Private Attorneys General Act (“PAGA”), Labor Code sections  
7 2698, *et seq.*, for an Order:

8 1. Approving the settlement of this PAGA representative action in the form agreed to  
9 by Plaintiff and Defendant VERMONT HEALTHCARE CENTER, LLC (“Defendant”) (together  
10 with Plaintiff, the “Parties”) in the PAGA Settlement Agreement (the “Settlement” or  
11 “Agreement”);

12 2. Appointing Plaintiff’s counsel as PAGA counsel, for settlement purposes only, and  
13 approving an award to Plaintiff’s counsel for reasonable attorney’s fees in the amount of  
14 \$25,000.00 and reasonable costs in the amount of \$16,338.59;

15 3. Appointing Simpluris, Inc. as the Settlement Administrator, and approving payment  
16 of Settlement Administrator’s costs in the amount of \$3,500.00;

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

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

20 6. Entering final Judgment; and

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

25 This Motion will be based upon this notice, the attached Memorandum of Points and  
26 Authorities, Declarations of William C. Sung, Tiffany L. Luu, Chinyere Ezekwesili, and Denise  
27 Islas of Simpluris, Inc., and exhibits thereto that were filed concurrently herewith, the records and  
28 files in this action, and any other further evidence or argument that the Court may properly

1 receive at or before the hearing.

2  
3 DATED: May 13, 2025

Respectfully submitted,

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

5  
6 By:



7 William C. Sung

8 Tiffany L. Luu

9 Attorneys for Plaintiff CHINYERE EZEKWESILI

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CHINYERE EZEKWESILI (“Plaintiff”) seeks approval of a proposed  
4 representative action settlement for civil penalties pursuant to the California Private Attorneys  
5 General Act, Labor Code sections 2698, *et seq.* (“PAGA”) against Defendant VERMONT  
6 HEALTHCARE CENTER, LLC (“Defendant”) (together with Plaintiff, the “Parties”). After a full  
7 day of mediation with experienced neutral mediator Lisa Klerman, Esq., the Parties reached a  
8 settlement and thereafter executed a PAGA Settlement Agreement (the “Settlement” or  
9 “Agreement”)<sup>1</sup>.

10 The Settlement calls for a Gross Settlement Amount of \$75,000.00. After deducting  
11 Plaintiff’s counsel’s reasonable attorney’s fees and costs awards, payment for the Settlement  
12 Administrator’s cost, and required payment to the California Labor and Workforce Development  
13 Agency (the “LWDA”), approximately \$10,556.49, will be paid to approximately 429 Aggrieved  
14 Employees. The average approximate share of the settlement paid to Aggrieved Employees is  
15 \$24.61. Pursuant to Labor Code section 2699(s)(2), Plaintiff now file this unopposed motion,  
16 seeking an order approving the proposed Settlement.

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

24 ///

25  
26  
27 <sup>1</sup> A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung in Support of  
28 Motion for Approval of PAGA Settlement (“Sung Decl.”). The proposed explanatory letter regarding PAGA settlement  
is attached to the Agreement as **Exhibit A** to the Agreement. All defined terms in this Motion have the same definition  
as that in the Agreement. This Action and Settlement is subject to post-PAGA reform, July 1, 2024 PAGA  
requirements. All citations to Labor Code §§ 2698, *et seq.* are to the post-July 1, 2024 PAGA statute.

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

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

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

Defendant owns and operates a hospital in Torrance, California. (Sung Decl., ¶ 9.) Defendant employed Plaintiff as an hourly-paid, non-exempt employee from approximately October 2023 to July 8, 2024 in the position of a Certified Nurse Assistant (CNA). (Declaration of Chinyere Ezekwesili in Support of Motion for Approval of PAGA Settlement [“Chinyere Decl.”], ¶ 2.) Plaintiff contends both Plaintiff and Plaintiff’s coworkers were subjected to the same unlawful labor practices during their employment by Defendant. (*Id.*)

On July 17, 2024, Plaintiff submitted the LWDA Letter of alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the “LWDA”) alleging violations of the California Private Attorneys General Act (“PAGA”). (Sung Decl., ¶ 10, **Exh. 2** – PAGA Notice.) Plaintiff’s administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations. (*Id.*)

On July 17, 2025, Plaintiff filed the Class Action Complaint alleging claims for (1) Overtime Wage Violations; (2) Meal Period Violations; (3) Rest Period Violations; (4) Wage Statement Penalties; (5) Waiting Time Penalties; and (6) Unfair Competition. (Sung Decl., ¶ 11.) On September 24, 2024, Plaintiff filed the operative First Amended Complaint (“Operative Complaint”) adding a cause of action for Civil Penalties under PAGA. (Sung Decl., ¶ 12, **Exh. 3** – Operative Complaint.)

On November 13, 2024, Plaintiff filed a Request for Dismissal of Class Claims Without Prejudice because Plaintiff signed an arbitration agreement with a class action waiver. (Sung Decl., ¶ 13.) On December 4, 2024, the Los Angeles Superior Court’s Complex Division granted the

1 dismissal of class claims, de-designated this case as complex, and transferred it to the Hon.  
2 Randolph M. Hammock.

3 **B. DISCOVERY AND INVESTIGATION**

4 Plaintiff and Defendant met and conferred regarding an agreement to mediate the action and  
5 further agreed to a protocol for an informal exchange of documents and information before mediation.  
6 (Sung Decl., ¶ 14.) Prior to mediation, the Parties engaged in informal discovery which allowed the  
7 Parties to meaningfully mediate this matter. (*Id.*) Specifically, Defendant produced: (1) PAGA statistics,  
8 including the number of Aggrieved Employees during the PAGA and number of Pay Periods worked  
9 during the PAGA Period; (2) time and payroll records of all 429 Aggrieved; (3) Defendant's employee  
10 handbook and standalone policy documents; and (4) Plaintiff's personnel file and time and payroll  
11 records. (*Id.*)

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

23 **C. SETTLEMENT NEGOTIATIONS**

24 On February 12, 2025, the Parties participated in private mediation before Lisa Klerman,  
25 Esq., an experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) The settlement  
26 negotiations were at arm's length and, although conducted in a professional manner, were  
27 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement  
28 of the dispute, but each side was also prepared to litigate their position through trial and appeal if a

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

10 **D. KEY TERMS OF THE PROPOSED PAGA SETTLEMENT**

11 The Settlement covers all current and former non-exempt or hourly paid employees who  
12 worked at least one pay period for Defendant in California at any time during the PAGA Period  
13 (“Aggrieved Employees”). (Agreement, § I.2.) The PAGA Period is from July 17, 2023 to February  
14 12, 2025 (the “PAGA Period”). (Agreement, § I.11.)

15 The Gross Settlement Amount of the Settlement is \$75,000.00. (Agreement, § I.8.) The  
16 Settlement provides that Plaintiff’s counsel will seek an award of reasonable attorney’s fees of  
17 \$25,000.00, which is equivalent to one-third (33 1/3%) of the Gross Settlement Amount, and up to  
18 \$20,000.00 in litigation costs. (Agreement, § III.4.a.) At this time, Plaintiff’s litigation costs are  
19 approximately \$16,338.59, including \$124.42 in estimated future costs in filing this Motion and  
20 supporting papers, the Settlement Administrator’s declaration of compliance re settlement  
21 administration, and corresponding proofs of service. (Sung Decl., ¶ 17; Exh. 4 – Itemized Costs.)

22 The Settlement provides the Settlement Administrator will be paid settlement administrator  
23 costs not to exceed \$3,500.00. (Agreement, § III.4.b.) The Parties jointly selected Simpluris, Inc. as  
24 the neutral entity to administer this Settlement based on its bid of \$3,500.00. (Sung Decl., ¶ 18; *see*  
25 *also* Declaration of Denise Islas of Simpluris Inc. in Support of Plaintiff’s Motion for Approval of  
26 PAGA Settlement [“Admin. Decl.”], ¶ 9, **Exh. C** – Administrator Bid.)

27 After deducting Plaintiff’s counsel’s attorney’s fee and cost awards and payment to the  
28 Settlement Administrator, in the amounts approved by the Court, the remainder, called the Net

1 Settlement Amount, will be distributed as 65% to the LWDA and 35% to Aggrieved Employees.  
2 (Agreement, § III.5.) The amount estimated in the Net Settlement Amount for the LWDA payment  
3 and the Aggrieved Employee payment is \$30,161.41. (Sung Decl., ¶ 19.) Accordingly,  
4 approximately \$10,556.49 (33 1/3% of the Net Settlement Amount) will be paid to the estimated  
5 429 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved  
6 Employee worked during the PAGA Period, and the raw average payment to Aggrieved Employees  
7 is estimated at \$24.61. (*Id.*; see Agreement, § III.5.b.)

8 Defendant will fund the Gross Settlement Amount by the later of November 12, 2025 or 30  
9 calendar days of the Effective Date, which is the date that the Court enters a final order and  
10 judgment approving the Settlement. (Agreement, §§ I.5, III.2.) Within 5 business days of the  
11 Effective Date, Defendant will provide the Settlement Administrator with a PAGA list of all  
12 Aggrieved Employees, including their full name, last known mailing address, social security  
13 number, and number of pay periods worked during the PAGA Period or dates of employment.  
14 (Agreement, § IV.2.)

15 Upon receipt of the PAGA list, the Settlement Administrator will perform a search on the  
16 National Change of Address database to update the Aggrieved Employees' addresses. (Agreement,  
17 § IV.3.) Within 21 calendar days of the Settlement being fully funded, the Settlement Administrator  
18 will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement, along with  
19 Individual PAGA Payments to all Aggrieved Employees; and distribute the 65% share of PAGA  
20 penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiff's counsel; and  
21 court-approval administration costs to itself. (Agreement, §§ IV.3, IV.5.)

22 Any checks for Individual PAGA Payments returned as non-deliverable will be remailed to  
23 the forwarding address affixed thereto. (Agreement, ¶ IV.4.) If no forwarding address is provided,  
24 the Settlement Administrator will promptly attempt to determine the correct address, using a skip-  
25 trace or other similar search, using the name, address and/or Social Security number of the  
26 Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*)  
27 Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by  
28 checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State

1 Controller's Office under the unclaimed property fund laws in the names of the Aggrieved  
2 Employees to whom the checks were issued. (*Id.*)

### 3 **III. DISCUSSION**

#### 4 **A. AVAILABILITY OF CIVIL PENALTIES**

5 The LWDA and its constituent departments and divisions are authorized to assess and  
6 collect civil penalties for specified violations of the Labor Code committed by an employer. With a  
7 stated goal of improving enforcement of existing Labor Code obligations, the California Legislature  
8 adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an  
9 aggrieved employee to initiate a private civil action "on behalf of himself or herself and other  
10 current or former employees . . ." (Lab. Code § 2699(a).) The penalties collected in these private  
11 civil actions are to be distributed 65% to the LWDA and 35% to the aggrieved employees. (*Id.* at §  
12 2699(m).) However, before an employee may file an action seeking to recover civil penalties for  
13 violations of any of the Labor Code provisions, he or she must comply with PAGA's administrative  
14 procedures as set forth in Labor Code section 2699.3, subdivisions (a)-(c), which include providing  
15 notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a  
16 prescribed period of time to permit the LWDA to investigate and to decide whether to cite the  
17 employer for the alleged violations. (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134  
18 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

19 Here, in compliance with Labor Code section 2699.3, on July 17, 2024, Plaintiff provided  
20 notice to the LWDA and Defendant. (Sung Decl., ¶ 10; Exh. 2.) Plaintiff's administrative  
21 exhaustion periods expired without the LWDA indicating its intent to investigate the allegations.  
22 (*Ibid.*) Accordingly, Plaintiff may proceed with this PAGA representative action.

#### 23 **B. THE SETTLEMENT WARRANTS APPROVAL**

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

##### 26 **1. The Dual Statutory Purposes of Deterrence and Punishment**

27 As a result of this litigation, Defendant has had to hire legal counsel, engage in informal  
28 discovery, and participate in mediation. Defendant is also now having to pay civil penalties to the

1 LWDA pursuant to the terms of the Settlement. Not including its own attorneys' fees and costs,  
2 Defendant is paying \$75,000.00 to resolve this matter.

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

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

17           Based on Plaintiff's counsel's analysis of the time and payroll records provided by  
18 Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum  
19 and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Per Defendant's disclosures, there were  
20 approximately 429 Aggrieved Employees who collectively worked approximately 9,400 pay  
21 periods. (*Id.*)

22           As a preliminary matter, Plaintiff's assessment of potential recovery of PAGA penalties in  
23 this Motion is limited to \$30 per pay period because of the following factors: (1) within 60 days of  
24 receiving the LWDA Notice, Defendant conducted an audit of the alleged Labor Code violations;  
25 (2) the current PAGA statute does not permit recovery stacking of civil penalties for derivative  
26 violations of Labor Code sections 201 to 203 (failure to pay all wages upon separation of  
27 employment); 204 (failure to timely pay wages); and 226 (failure to provide accurate, itemized  
28 wage statements; and (3) Defendant has not been subject to any prior court judgments or Labor

1 Commissioner order placing it on notice of any violation pertaining to the claims Plaintiff asserted  
2 and the heightened subsequent violation penalty does not apply. (Sung Decl., ¶ 22; *see* Lab. Code  
3 § 2699(h)(1)-(2) [limiting recoverable civil penalty to “30 percent” of the penalty sought if the  
4 defendant “has taken all reasonable steps to prospectively be in compliance,” such as by conducting  
5 an audit]; Lab. Code § 2699(i) [“An aggrieved employee shall not collect a civil penalty for any  
6 violation of Sections 201, 202, 203, of the Labor Code, or for a violation of Section 204 that is  
7 neither willful or intentional, or a violation of Section 226 that is neither knowing or intentional nor  
8 a failure to provide a wage statement, that is in addition to the civil penalty collected by that  
9 aggrieved employee for the underlying unpaid wage violation.”]; Lab. Code § 2699(f)(2)(B)  
10 [authorizing heightened \$200 per pay period civil penalty if, “[w]ithin the five years preceding the  
11 alleged violation, the agency or any court issued a finding or determination to the employer that its  
12 policy or practice giving rise to the violation was unlawful.”]) Plaintiff’s counsel’s valuation of each  
13 theory of liability is set forth below.

14       Underpayment of Overtime to Overnight Shift Employees. Plaintiff alleges that Defendant  
15 failed to follow its own workweek and workday definition when determining hours worked for  
16 overtime purposes for employees who worked overnight shifts. (Sung Decl., ¶ 23.) Defendant’s  
17 employee handbook defines the workday as 12:01 a.m. to midnight and the workweek as 12:01 a.m.  
18 on Sunday to midnight on the following Saturday. (*Id.*) Instead of calculating overtime hours  
19 worked based on its workday and workweek definition, Defendant calculated overtime hours based  
20 on the shift start and end times; for instance, an employee worked an overnight shift that started in  
21 the evening of Day One and ended after midnight on Day Two; and then worked another shift later  
22 during that Day Two. (*Id.*) Although the Defendant’s policy provided a midnight-to-midnight  
23 workday, its payroll software was nevertheless counting all of the overnight shift hours above as  
24 work during Day One only. Only the later day-shift hours on Day Two were counted as work on  
25 that Day Two. (*Id.*) This practice has resulted in some underpayment of overtime and double time to  
26 Aggrieved Employees who worked overnight shifts. (*Id.*) Plaintiff’s expert found approximately  
27 5.10% of pay periods of Aggrieved Employees had an underpayment of overtime when calculating  
28 overtime hours based on Defendant’s workday and workweek definitions. (*Id.*) Extrapolating to

1 9,400 pay periods and applying a \$30 penalty per pay period, potential recoverable civil penalties  
2 are approximately **\$14,382.00**. (*Id.*)

3 In response, Defendant argued that its practice resulted in Aggrieved Employees being  
4 overpaid overtime, it is entitled to offsets of overpayment, and after offsetting overpayments,  
5 Aggrieved Employees were paid all overtime due. (*Id.*)

6 Regular Rate Violations. Plaintiff alleges that Defendant failed to factor bonuses for taking  
7 extra shifts, a non-discretionary incentive compensation, into the regular rate of pay for overtime,  
8 meal period premiums, and paid sick leave. (Sung Decl., ¶ 24.) In response, Defendant argues that  
9 this bonus was discretionary in nature and therefore need to be factored into the regular rate. (*Id.*)  
10 Plaintiff's counsel and his expert found there was one pay period in which an Aggrieved Employee  
11 received a bonus and meal period premium; 13 pay periods in which an Aggrieved Employee  
12 received a bonus and overtime; and one pay period in which an Aggrieved Employee received a  
13 bonus and paid sick leave. (*Id.*) Thus, potential recoverable civil penalties are approximately  
14 **\$450.00** (15 pay periods x \$30).

15 Meal Period Violations. Plaintiff alleges that Defendant failed to provide Aggrieved  
16 Employees with full, 30-minute meal periods before the end of the fifth and tenth hours of work.  
17 (Sung Decl., ¶ 25.) Plaintiff's counsel and his expert found, after applying meal period premiums,  
18 approximately 29.30% of pay periods had one or more meal period violations. (*Id.*) Extrapolating to  
19 9,400 pay periods and applying a \$30 penalty per pay period, potential recoverable civil penalties  
20 are approximately **\$82,626.00**. (*Id.*) In response, Defendant vehemently contests Plaintiff's expert's  
21 findings and asserts that Defendant's expert only found that approximately 5% of pay periods had  
22 potential non-compliant meal period punches, its audit verified significant compliance with meal  
23 periods, and that employees chose to not take meal periods out of their own volition. (*Id.*)

24 Rest Period Violations. Plaintiff contends that Aggrieved Employees sometimes could not  
25 take a third rest period when they worked shifts over 10 hours in length. (Sung Decl., ¶ 26.)  
26 Plaintiff's counsel and his expert found approximately 8.25% of pay periods contained shifts over  
27 10 hours in length. (*Id.*) Extrapolating to 9,400 pay periods and applying a \$30 penalty per pay  
28 period, potential recoverable civil penalties are approximately **\$23,265.00**. (*Id.*) In response,

1 Defendant argues that it maintains compliant rest period policies, its audit verified that employees  
2 were taking third rest breaks when they worked over 10 hours in length, and any instance of non-  
3 compliant rest periods were due to employees' own volition. (*Id.*)

4 Derivative Penalties. Plaintiff does not assess PAGA penalties for derivative violations of  
5 Labor Code §§ 201 to 203 (failure to pay all wages due upon separation); 204 (failure to timely pay  
6 wages); and 226 (failure to provide accurate itemized wage statements) under Labor Code §  
7 2699(i), which prohibits stacking of derivative PAGA penalties. (Sung Decl., ¶ 27.)

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 **\$120,723.00**. (Sung Decl., ¶ 28.) However, PAGA penalties are subject to discretionary reduction  
11 by this Court. (*Id.*) Pursuant to Labor Code § 2699(e)(2), the Court can decline to award the full  
12 amount of PAGA penalties where ". . . if, based on the facts and circumstances of the particular  
13 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or  
14 confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown  
15 in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the  
16 trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at  
17 complying with the law. (*See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203  
18 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D.  
19 Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 [reducing PAGA  
20 penalties by over 82% in part because employer "not aware" of violations].) Here, Defendant  
21 argued that based on their compliant policies and practices, the high meal period compliance rate,  
22 and the hyper-technical nature of the regular rate of pay and overnight shift workday/workweek  
23 theories of liability, the Court will significantly reduce any award of PAGA penalties based on its  
24 good-faith compliance with the Labor Code. (Sung Decl., ¶ 28.)

25 Taking into account Defendant's defenses on the merits and the potential for the Court to  
26 reduce a PAGA penalty award, Plaintiff's counsel believes there is a 50% risk factor that the Court  
27 will find some of the claims in Defendant's favor and/or exercise its discretion to reduce the PAGA  
28 penalty award. (Sung Decl. at ¶ 29.) Accordingly, applying an 50% discount to the maximum

1 potential recovery, Plaintiff's counsel believes the realistic recovery at trial on these claims to be  
2 **\$60,361.50.**

3 The \$75,000.00 settlement is an excellent result and amounts to "genuine and meaningful"  
4 relief "consistent with the underlying purpose of the statute to benefit the public" as it represents  
5 approximately **124.25%** of Plaintiff's realistic recovery. (Sung Decl., ¶ 30; *see Villalobos v.*  
6 *Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL  
7 12732709, at \*5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d  
8 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved  
9 Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover  
10 anything. (Sung Decl., ¶ 30.)

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

13 For the reasons set forth below, Plaintiff requests that the Court approve an attorney's fee  
14 award of \$25,000.00 and cost award of \$16,338.59 to Plaintiff's counsel.

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

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

23 Plaintiff's counsel seeks an award of attorneys' fees on the "percentage of recovery/common  
24 fund" theory. The purpose of this approach is to "spread litigation costs proportionately among all the  
25 beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes*  
26 *Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the  
27 California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a  
28 fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of

1 the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12  
2 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied  
3 “consistently in California when an action brought by one party creates a fund in which other persons[ ]  
4 are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine  
5 include:

6 fairness to the successful litigant, who might otherwise receive no benefit because his  
7 recovery might be consumed by the expenses; correlative prevention of an unfair  
8 advantage to the others who are entitled to share in the fund and who should bear their  
9 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.

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

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

15 **This court is compelled to ask, “Is this process necessary?” Under a cost-benefit**  
16 **analysis, the answer would be a resounding, “No!”** Not only do the *Lindy* and *Kerr–*  
17 *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.

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

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

26 According to a leading treatise on class actions: “No general rule can be articulated on what is a  
27 reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable  
28 fee award from a common fund in order to assure that the fees do not consume a disproportionate part

1 of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.”  
2 (Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys’ fees that are 50% of the fund  
3 are typically considered the upper limit, with 30–40% commonly awarded in cases where the settlement  
4 is relatively small. (*Id.*; see also *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.  
5 294, 297 [stating that most cases where 30–50% was awarded involved “smaller” settlement funds of  
6 under \$10 million].)

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

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

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

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

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

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

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

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

20          "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases."  
21 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar  
22 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk,  
23 challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an  
24 already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far  
25 from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of  
26 the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate  
27 fees in terms of percentages of the settlement fund or the amounts recovered by the Plaintiff or of  
28 an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in

1 duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7)  
2 deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as  
3 early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest  
4 bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task  
5 Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

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

23 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*  
24 *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 49-50 (approving multiplier of about 2.5); *Coalition*  
25 *for L.A. County Planning etc. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251  
26 (approving multiplier of about 12.8). In representative actions such as this one, where the value of  
27 the benefit conferred to the representative group “can be monetized with a reasonable degree of  
28 certainty,” the court may “adjust the lodestar in comparison to a percentage of the common fund to

1 ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal  
2 marketplace in comparable litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.

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

18 Here, Plaintiff’s counsel’s current lodestar is **\$62,610.00** which is based on 94.10 hours of  
19 attorney time for William Sung and Tiffany Luu at their customary hourly rates. (Sung Decl., ¶¶ 32–  
20 33, **Exhs. 5 and 6** (Time and Task Log for William Sung and Tiffany Luu); Luu Decl., ¶ 8.)  
21 Plaintiff’s counsel’s requested fee award represents a **negative 0.40** lodestar multiplier. (Sung  
22 Decl., ¶ 33.) Additionally, Plaintiff’s counsel estimate they will devote no less than 10 hours,  
23 although likely more time, to additional tasks, which are hours not included in the foregoing  
24 lodestar total. (Sung Decl., ¶ 34.) These additional hours will include time spent to obtain and  
25 monitor approval of the Settlement and requested awards, oversee the settlement administration  
26 process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding  
27 the case. (*Id.*) Plaintiff’s counsel also bear the risk of taking whatever actions are necessary if  
28 Defendant fails to pay.

1 The amount of fees requested under the Settlement is warranted based on the contingent risk  
2 that Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on  
3 the Aggrieved Employees and State of California as a result of the Settlement, and the skill  
4 displayed by Plaintiff's counsel. Thus, the request for attorneys' fees satisfies a lodestar check.  
5 Accordingly, the Court should find that the circumstances of the present case justify an award of 33  
6 1/3% of the Gross Settlement Amount for attorneys' fees.

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

8 Plaintiff's counsel are entitled to recover the out-of-pocket costs and expenses they  
9 reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir.  
10 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's  
11 counsel may request reimbursement of costs up to \$20,000.00. (Agreement, § III.4.a.) Plaintiff's  
12 counsel seek reimbursement of actual costs in the amount of \$16,338.59, including \$124.42 in  
13 estimated future costs in filing this Motion and supporting papers, the Settlement Administrator's  
14 declaration of compliance re settlement administration, and corresponding proofs of service. (Sung  
15 Decl., ¶ 17; Exh. 4.) These expenses were reasonably necessary to the litigation and were actually  
16 incurred. Moreover, these expenses are below the maximum amount (\$20,000.00) allowed in the  
17 Settlement, and the remainder will be allocated to the Net Settlement Amount. Therefore, costs  
18 should be reimbursed in full, up to the maximum amount allowed in the Settlement.

19 **D. THE COURT SHOULD APPROVE THE SETTLEMENT**  
20 **ADMINISTRATION FEES**

21 Pursuant to the terms of the Settlement, the fees and costs of the Settlement Administrator,  
22 are to be paid out of the common fund. (Agreement, § III.4.B.) The settlement administration fees  
23 are based on a flat-sum amount of \$3,500.00. (*Id.*; Admin. Decl., ¶ 9, Exh. C.) The Settlement  
24 Administrator's duties include, but are not limited to, receiving and analyzing the Aggrieved  
25 Employee list, processing Aggrieved Employees' names and addresses against the National Change  
26 of Address database ("NCOA") prior to mailing, setting up and managing a Qualified Settlement  
27 Fund ("QSF") Escrow Account, calculating Individual PAGA Payments to Aggrieved Employees,  
28 disbursing settlement payments to Aggrieved Employees, the State of California, and Plaintiff's

1 counsel including necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter,  
2 tendering funds from uncashed checks to the Unclaimed Property Fund to be held in the name of the  
3 Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶ 6-8, Exh. C;  
4 Agreement, §§ IV.1-7.) All of these duties are included in the agreed-upon flat fee of \$3,500.00.  
5 Thus, the Administrator's fees should be approved.

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

8       On May 13, 2025, Plaintiff's counsel caused a copy of the Motion for Approval of PAGA  
9 Settlement and the fully executed Agreement to be uploaded to the LWDA's website. (Sung Decl., ¶  
10 36, **Exh. 7**-LWDA Upload Confirmation.)

11 **IV.    CONCLUSION**

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

14  
15 DATED: May 13, 2025

Respectfully submitted,

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

17  
18 By: 

19 \_\_\_\_\_  
William C. Sung

Tiffany L. Luu

Attorneys for Plaintiff CHINYERE EZEKWESILI