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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11 AMOURAFINA BURTON, an individual and
on behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 KINETIC EVENTS, INC., a California
15 corporation; ATRIUM PAYROLL
SERVICES, LLC, a New York limited liability
16 company; and DOES 1 through 50,

17 Defendants.

Case No.: CGC-24-620497

[Assigned for All Purposes to:
Hon. Ethan P. Schulman, Dept. 304]

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

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

DATE: October 13, 2026

TIME: 11:00 a.m.

DEPT: 304

Action Filed: December 10, 2024

Trial Date: Not Set

1 TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE that on October 13, 2026, at 11:00 a.m. in Department 304 of the
3 Superior Court of the State of California for the County of San Francisco, located at 400 McAllister
4 Street, San Francisco, CA 94102, Plaintiff Amourafina Burton ("Plaintiff") will move the Court,
5 pursuant to California Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, *et seq.*, for
6 an Order:

- 7 1. Approving the settlement of this PAGA representative action in the form agreed to
8 by Plaintiff and Defendants Kinetic Events, Inc. ("Kinetic") and Atrium Payroll Services, LLC
9 ("Atrium") ("Defendants") (together with Plaintiff, the "Parties") in the PAGA Settlement
10 Agreement (the "Settlement" or "Agreement");
- 11 2. Appointing Plaintiff's counsel as PAGA counsel, for settlement purposes only, and
12 approving an award to Plaintiff's counsel for reasonable attorney's fees in the amount of
13 \$83,333.33 (33 1/3% of the Gross Settlement Amount) and reasonable costs in the amount of
14 \$13,582.22;
- 15 3. Appointing ILYM Group, Inc. as the Administrator, and approving payment of
16 Administrator's costs in the amount of \$11,700.00;
- 17 4. Approving a service award in the amount of \$10,000.00 to Plaintiff for Plaintiff's
18 service to the LWDA and Aggrieved Employees;
- 19 5. Approving the release of PAGA claims by Plaintiff on behalf of Aggrieved
20 Employees and the LWDA;
- 21 6. Directing consummation of the Settlement pursuant to its terms and provisions;
- 22 7. Entering final Judgment; and
- 23 8. Without affecting the finality of the Judgment and Order, reserving exclusive and
24 continuing jurisdiction over the Action, the Parties, and the Aggrieved Employees for purposes of
25 interpreting and enforcing the terms, conditions, and obligations of the Settlement pursuant to
26 California Code of Civil Procedure § 664.6.

27 This Motion will be based upon this notice, the attached Memorandum of Points and
28 Authorities, Declarations of William C. Sung, Amourafina Burton, and Lisa Mullins of ILYM

1 Group, Inc., and exhibits thereto that were filed concurrently herewith, the records and files in
2 this action, and any other further evidence or argument that the Court may properly receive at or
3 before the hearing.

4
5 DATED: August 31, 2026

Respectfully submitted,

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

7
8 By: 

9 William C. Sung

10 Tiffany L. Luu

11 Joseph C. Ramli

12 Attorneys for Plaintiff AMOURAFINA BURTON
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amourafina Burton (“Plaintiff”) seeks approval of a proposed representative action
4 settlement for civil penalties pursuant to the California Private Attorneys General Act, Labor Code
5 §§ 2698, *et seq.* (“PAGA”) against Defendants Kinetic Events, Inc. (“Kinetic”) and Atrium Payroll
6 Services, LLC (“Atrium”; collectively, “Defendants”). After a full day of mediation with
7 experienced neutral mediator Barry Appell, Esq., the Parties reached a settlement and thereafter
8 executed a PAGA Settlement Agreement (the “Settlement” or “Agreement”)¹.

9 The Settlement calls for a Gross Settlement Amount of \$250,000.00. After deducting
10 Plaintiff’s counsel’s reasonable attorney’s fees and costs awards, Plaintiff’s service award, payment
11 for the Administrator’s cost, and required payment to the California Labor and Workforce
12 Development Agency (the “LWDA”), approximately \$45,984.56 will be paid to approximately
13 1,747 Aggrieved Employees who collectively worked approximately 19,044 weekly Pay Periods.
14 Pursuant to Labor Code § 2699(s)(2)², Plaintiff now file this unopposed motion, seeking an order
15 approving the proposed Settlement.

16 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
17 statute, which states that the “court shall review and approve any penalties sought as part of a
18 proposed settlement agreement pursuant to this part.” (Lab. Code § 2699(s)(2).) In deciding
19 whether to grant approval of a proposed settlement, the primary issues to be decided is whether the
20 settlement is fair, adequate, and reasonable. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal.,
21 July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5.)

22 As set forth herein, the proposed Settlement embodies all the features of a settlement that is
23 fair, adequate, and reasonable, as it is the product of (1) an arms-length negotiation, (2) negotiated
24 by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient
25

26
27 ¹ A true and correct copy of the Agreement is attached as **Exhibit 1** to the Declaration of William C. Sung (“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.

28 ² This Action and Settlement are 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.

1 investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4)
2 reflects a reasoned compromise based directly on the relative strength and value of the PAGA
3 claims, as well as the risks, expense, complexity, and likely duration of further litigation.

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

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

6 Defendant Kinetic provides staffing for event venues throughout the nation, including the
7 Bay Area, Los Angeles, and San Diego. (Sung Decl., ¶ 9.) Defendant Atrium is an employer of
8 record (“EOR”) payroll services company that provides hiring, onboarding, payrolling
9 administration for temporary staffing employee. (*Id.*) Defendants employed Plaintiff as a non-exempt
10 employee in the position of event staff from approximately December 2022 to June 14, 2024.
11 (Declaration of Amourafina Burton [“Burton Decl.”], ¶ 2.)

12 On July 11, 2024, Plaintiff submitted the LWDA Letter of alleged Labor Code violations to
13 Defendants and the California Labor and Workforce Development Agency (the “LWDA”). (Sung
14 Decl., ¶ 10, **Exh. 2** – LWDA Letter.) Plaintiff’s administrative exhaustion period expired without
15 the LWDA indicating its intent to investigate the allegations. (*Id.*) On September 24, 2024, Plaintiff
16 filed a Representative Action Complaint against Defendants, alleging a single cause of action for
17 Violation of the California Private Attorneys General Act (“PAGA”). (Sung Decl., ¶ 11, **Exh. 3** –
18 Complaint.)

19 **B. DISCOVERY AND INVESTIGATION**

20 Prior to mediation, the Parties engaged in a significant amount of formal discovery and
21 motion practice over discovery. (Sung Decl., ¶ 12.) The Court granted in part Defendant’s contested
22 Motion to Bifurcate and Sequence Discovery on July 31, 2025; the Parties attended an Informal
23 Discovery Conference with the Court on October 16, 2025; Plaintiff responded to Defendant’s
24 Form Interrogatories-General, Form Interrogatories-Employment, Special Interrogatories, Request
25 for Production of Documents, and Request for Admissions, and sat for her deposition; Defendants
26 responded to Plaintiff’s Special Interrogatories Sets 1 to 3 and Request for Production of
27 Documents Sets 1 and 2; and Plaintiff took the deposition of Defendant Kinetic’s Person Most
28 Qualified. (Sung Decl., ¶ 13.)

1 Through formal discovery, Defendants produced a 15% sampling of time and payroll
2 records of Aggrieved Employees, written policy documents including applicable portions of
3 Defendant Kinetic's & Atrium's employee handbook and standalone policies, and Plaintiff's
4 personnel file, time records, and wage statements. (Sung Decl., ¶ 14.) Said records allowed the
5 Parties to meaningfully engage in mediation. (*Id.*)

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

17 C. SETTLEMENT NEGOTIATIONS

18 On June 25, 2026, the Parties participated in private mediation before Barry M. Appell, an
19 experienced, neutral, class action and PAGA mediator. (Sung Decl., ¶ 16.) After extensive
20 negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and
21 Defendants' defenses, the Parties reached a settlement of this Action at mediation. (*Id.*) The Parties
22 recognized that the issues presented in the Action are likely only to be resolved with extensive and
23 costly pretrial and trial proceedings, and that further litigation will lead to inconvenience,
24 distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation.
25 (*Id.*) Plaintiff and Plaintiff's counsel considered the risk and uncertainty of the outcome inherent in
26 any litigation when determining whether this Settlement was the correct option. (*Id.*)

27 ///

28 ///

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

2 The Settlement covers all current and former non-exempt or hourly paid employees who
3 worked for Defendants in California during the PAGA Period (“Aggrieved Employees”).
4 (Agreement, § 2.4.) The PAGA Period is July 11, 2023 through the date the Court grants approval
5 of the Settlement or September 24, 2026, whichever date is earlier. (Agreement, § 2.20.) The Gross
6 Settlement Amount of the Settlement is \$250,000.00. (Agreement, § 2.11.) The Settlement provides
7 that Plaintiff’s counsel may seek an award of reasonable attorney’s fees of up to one-third of the
8 Gross Settlement Amount which is \$83,333.33, and up to \$20,000.00 in litigation costs.
9 (Agreement, § 3.2.1.) Plaintiff’s litigation costs are approximately \$13,582.22, including estimated
10 future costs in filing and delivering courtesy copies of this Motion and supporting papers (\$146.32),
11 any supplemental papers for this Motion (\$72.25), and Administrator’s declaration of compliance re
12 settlement administration (\$72.25). (Sung Decl., ¶ 17; Exh. 4 – Itemized Costs.)

13 The Administrator will be paid administration costs not to exceed \$11,700.00. (Agreement,
14 § 3.2.4.) The Parties jointly selected ILYM Group as the neutral entity to administer this Settlement
15 based on its bid of \$11,700.00. (Sung Decl., ¶ 18; *see also* Declaration of Lisa Mullins [“Admin.
16 Decl.”], ¶¶ 6-7, Exh. C – Administrator Bid.) The Settlement further provides that Plaintiff will be
17 paid a service award in the amount of \$10,000.00 for Plaintiff’s service to the LWDA and the
18 Aggrieved Employees. (Agreement, § 3.2.2.)

19 After deducting Plaintiff’s attorney’s fee and cost awards, service award, and payment to the
20 Administrator, in the amounts approved by the Court, the remainder, called the Net Settlement
21 Amount, will be distributed as 65% to the LWDA and 35% to Aggrieved Employees. (Agreement,
22 § 3.2.4.) The amount estimated in the Net Settlement Amount for the LWDA payment and the
23 Aggrieved Employee payment is \$131,384.45. (Sung Decl., ¶ 19.) Accordingly, approximately
24 \$45,383.93 (35% of the Net Settlement Amount) will be paid to the estimated 1,747 Aggrieved
25 Employees on a pro-rata basis based on the number of pay periods each Aggrieved Employee
26 worked during the PAGA Period, and the raw average payment to Aggrieved Employees is
27 estimated at \$26.32. (*Id.*; *see* Agreement, § 3.2.4.1.) Due to the nature of Defendants’ business,
28 Aggrieved Employees are typically short-term employees, and the 1,747 Aggrieved Employees

collectively worked approximately 19,044 weekly PAGA pay periods, which is approximately 10.9 weeks per Aggrieved Employee. (Sung Decl., ¶ 19; *see* Agreement, § 4.1.)

Defendants will fund the Gross Settlement Amount within 30 days of the Effective Date, which is the date that the Court enters a final order and judgment approving the Settlement. (Agreement, §§ 2.10, 4.3.) Within 30 days of the Effective Date, Defendants will provide the Administrator with a PAGA list of all Aggrieved Employees, including their full name, last known mailing address, social security number, and number of Pay Periods. (Agreement, §§ 2.5, 4.2.)

Upon receipt of the PAGA list, the Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. (Agreement, § 4.4.2.) Within 14 calendar days of the Settlement being fully funded, the Administrator will mail copies of the explanatory letter, attached as **Exhibit A** to the Agreement and translated into Spanish, along with Individual PAGA Payments to all Aggrieved Employees; and distribute the 65% share of PAGA penalties to the LWDA, court-approved attorney's fees and cost awards to Plaintiff's counsel, court-approved service award to Plaintiff, and court-approval administration costs to itself. (Agreement, §§ 4.4, 4.4.1.)

Any checks for Individual PAGA Payments returned as non-deliverable will be remailed within seven (7) days to the forwarding address affixed thereto. (Agreement, § 4.4.2.) If no forwarding address is provided, the Administrator will promptly attempt to determine the correct address, using a skip-trace or other similar search, using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing if a new address is located. (*Id.*) Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be transmitted to Bay Area Legal Aid, but if the Court does not approve said transmittal, then the Administrator shall tendered the unclaimed funds to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. (Agreement, § 4.4.4.)

Finally, the Settlement contemplates 19,044 weekly PAGA Pay Periods worked by Aggrieved Employees. (Agreement, § 4.1.) In the event the number of PAGA Pay Periods during

1 the PAGA Period increases by more than 15% above 19,044 (i.e., more than 21,901 PAGA Pay
2 Periods), then Defendants shall, at its option, either (a) increase the Gross Settlement Amount
3 proportionally by PAGA Pay Periods in excess of the 15%; or (b) cap the end date of the PAGA
4 Period as of the date the number of Pay Periods reaches but does exceed 15% (the “Escalator
5 Clause”). (Agreement, § 4.1.1.) No later than 14 days after the end of the PAGA Period, Defendants
6 shall verify the number of PAGA Pay Periods, and if the Escalator Clause is triggered, advise
7 Plaintiff of which option it will choose. (*Id.*)

8 **III. DISCUSSION**

9 **A. AVAILABILITY OF CIVIL PENALTIES**

10 The LWDA and its constituent departments and divisions are authorized to assess and
11 collect civil penalties for specified violations of the Labor Code committed by an employer. With a
12 stated goal of improving enforcement of existing Labor Code obligations, the California Legislature
13 adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an
14 aggrieved employee to initiate a private civil action “on behalf of himself or herself and other
15 current or former employees . . .” (Lab. Code § 2699(a).) The penalties collected in these private
16 civil actions are to be distributed 65% to the LWDA and 32% to the aggrieved employees. (*Id.* at §
17 2699(m).) Before an employee may file an action seeking to recover civil penalties for violations of
18 any of the Labor Code provisions enumerated in Labor Code § 2699.5, he or she must comply with
19 the Act’s administrative procedures as set forth in Labor Code § 2699.3(a). (*Caliber Bodyworks,*
20 *Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006)
21 142 Cal.App.4th 330.) Here, in compliance with Labor Code § 2699.3, Plaintiff provided notice to
22 the LWDA and Defendants. (Sung Decl., ¶ 10; Exh. 2.) Plaintiff’s administrative exhaustion
23 periods expired without the LWDA indicating its intent to investigate the allegations. (*Id.*)
24 Accordingly, Plaintiff may proceed with this PAGA representative action.

25 **B. THE SETTLEMENT WARRANTS APPROVAL**

26 Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(s)(2).) Here,
27 the circumstances weigh heavily in favor of approval, as explained below.

28 ///

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

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

15 Based on Plaintiff's counsel's analysis of the time and payroll records provided by
16 Defendants and on information from Plaintiff, Plaintiff's counsel evaluated Defendants' maximum
17 and risk-adjusted potential exposure. (Sung Decl., ¶ 21.) Based on Defendants' disclosures, there
18 were approximately 1,747 Aggrieved Employees who collectively worked approximately 19,044
19 pay periods. (*Id.*) Plaintiff's counsel's damages valuation utilizes the initial violation rate penalty of
20 in analyzing PAGA penalties because, based on Plaintiff's counsel's investigation, Defendants has
21 not been subject to any prior court judgments or Labor Commissioner order placing it on notice of
22 any violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation
23 penalty does not apply. (*Id.*; see *Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157,
24 1173.) Furthermore, any penalty sought is reduced by one-half (i.e., \$50 per pay period instead of
25 \$100) because Defendants' regular pay period is weekly rather than biweekly or semimonthly.
26 (Lab. Code 2699(o).) Plaintiff's counsel's valuation of each theory of liability is set forth below.

27 Off-the-Clock Work. Plaintiff alleged that she clocked in and out of her shifts on a
28 timekeeping system called NextCrew; however, Defendants paid Plaintiff based on her scheduled

1 shift time who was checked in by a shift lead rather than the NextCrew time punches that were
2 optional for employees to record their hours worked. (Sung Decl., ¶ 22.) Based on Plaintiff's
3 expert's comparative analysis of employees' NextCrew time punches and their shift time that was
4 confirmed by a shift lead, there were wage discrepancies in approximately 21.34% of pay periods,
5 and what then appears as an underpayment of overtime wages for approximately 7.11% of pay
6 periods. (*Id.*) Extrapolating to 19,044 pay periods, PAGA penalties for unpaid wages is **\$203,217.12**
7 and for unpaid overtime is **\$67,739.04**. (*Id.*) Defendants argued that employees were not required to
8 punch in and out on NextCrew and many employees did not do so, Defendants properly paid
9 employees based on their shift schedule, and Defendants often overpaid employees for time no
10 worked under that methodology because employees can be late or leave work early. (*Id.*)

11 Meal Period Violations. Plaintiff alleged that her meal breaks were often interrupted by
12 patrons, resulting in on-duty meal period violations. (Sung Decl., ¶ 23.) Estimating a 50% violation
13 rate and extrapolating to 19,044 pay periods, PAGA penalties for meal break violations total
14 **\$476,100.00**. (*Id.*) In response, Defendants countered that they maintained compliant meal period
15 policies and practices throughout the PAGA Period and always provided compliant meal periods in
16 line with those policies. (*Id.*; see *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
17 1040-1041 [holding employers need only "provide" meal periods to employees and are not
18 obligated to "police" meal periods].) Defendants further argued that they paid for meal periods at all
19 times, paid meal period premiums when applicable, and implemented meal period attestations in
20 August 2024 as evidence of their superior meal period compliance practices. (Sung Decl., ¶ 23.)

21 Rest Period Violations. Plaintiff alleged that her rest breaks were often interrupted by
22 patrons, resulting in on-duty meal period violations. (Sung Decl., ¶ 24.) Estimating a 20% violation
23 rate and extrapolating to 19,044 pay periods, PAGA penalties for rest break violations total
24 **\$190,440.00**. (*Id.*) In response, Defendants counter that they maintained compliant rest period
25 policies and practices throughout the PAGA Period and always provided compliant rest periods in
26 line with those policies. (*Id.*) Defendants further argued that they implemented rest period
27 attestations in August 2024 as evidence of their superior rest period compliance practices. (*Id.*)

28 ///

1 Derivative Wage Statement and Waiting Time Violations. Plaintiff alleged that, as a result
2 of the aforementioned wage violations, Defendants failed to furnish Aggrieved Employees with
3 accurate itemized wage statements in violation of Labor Code § 226(a). (Sung Decl., ¶ 25.)
4 Estimating a 50% violation rate by pay period and extrapolating to 19,044 pay periods, PAGA
5 penalties are estimated at **\$476,100.00**. (*Id.*) Plaintiff alleged that, as a result of the aforementioned
6 wage violations, Defendants failed to pay all wages due to formerly employed Aggrieved
7 employees upon their separation of employment in violation of Labor Code §§ 201 and 202. (*Id.*) At
8 \$100 per former employee for 873 former employees, PAGA penalties are estimated to be
9 **\$87,300.00**. (*Id.*) In response, Defendants points to its substantive defenses on off-the-clock work
10 and meal/rest period claims to argue that these derivative claims will fail with the underlying
11 claims. (*Id.*)

12 Expense Reimbursement. Plaintiff alleged that Defendants required Plaintiff to use her
13 personal cellphones for work, such as to clock in and out of her shifts using the NextCrew system.
14 (Sung Decl., ¶ 26.) In response, Defendants countered that employees were not required to use their
15 cell phone for business purposes. The payroll records show that Defendants began reimbursing
16 employees for cellphone expenses on November 1, 2024, as all employees are now required to use
17 their cell phone for a business purpose. (*Id.*) Based on this date, Plaintiff’s counsel estimate
18 approximately 11.11% of the pay periods had a reimbursement violation, and extrapolated to 19,044
19 pay periods, PAGA penalties are estimated to be **\$105,789.42**. (*Id.*)

20 Maximum Exposure and Realistic Recovery. Based on the foregoing, Plaintiff’s counsel
21 estimates Defendants’ maximum exposure for PAGA penalties to be approximately **\$1,606,685.6**,
22 which is approximately 15.56% of the Gross Settlement Amount. (Sung Decl., ¶ 27.)

23 However, PAGA penalties are subject to discretionary reduction by this Court. (Sung Decl.,
24 ¶ 28.) Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of
25 PAGA penalties where “. . . if, based on the facts and circumstances of the particular case, to do
26 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
27 Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington*
28 *v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court’s

1 reduction of PAGA penalties by 90%, citing the employer’s good-faith attempt at complying with
2 the law. (See also *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
3 [affirming reduction of PAGA penalties]; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED
4 CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part
5 because employer “not aware” of violations].) Here, Defendants argued that based on their
6 compliant policies and practices, their defenses on Plaintiff’s theories of liability on the merits, the
7 Court will significantly reduce any award of PAGA penalties based on its good-faith compliance
8 with the Labor Code. (*Id.*)

9 Considering Defendants’ defenses on the merits and the potential for the Court to reduce a
10 PAGA penalty award, Plaintiff’s counsel believes there is a 70% risk factor that the Court will find
11 some of the claims in Defendants’ favor and/or exercise its discretion to reduce the PAGA penalty
12 award. (Sung Decl. at ¶ 29.) Accordingly, applying a 70% discount to the maximum penalty
13 exposure, Plaintiff’s counsel believes the realistic recovery at trial on these claims to be no more
14 than **\$482,005.68**. (*Id.*) The \$250,000.00 settlement is a fair and equitable result and amounts to
15 “genuine and meaningful” relief “consistent with the underlying purpose of the statute to benefit the
16 public” as it represents approximately **51.87%** of Plaintiff’s realistic recovery. (*Id.*; see *Villalobos v.*
17 *Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL
18 12732709, at *5; see also *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
19 1110, 1135.)

20 **C. THE REQUESTED ATTORNEYS’ FEES AND COST AWARD SHOULD BE**
21 **APPROVED**

22 For the reasons set forth below, Plaintiff requests that the Court approve an attorney’s fee
23 award of **\$83,333.33** and cost award of **\$13,582.22** to Plaintiff’s counsel.

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

26 California courts have long awarded attorneys’ fees as a percentage of the benefit created by
27 counsel in pursuing claims on behalf of a class. (See, e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25.) The
28 California Supreme Court has held, “when a number of persons are entitled in common to a specific fund,

1 and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation
2 of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

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

13 ...fairness to the successful litigant, who might otherwise receive no benefit because his
14 recovery might be consumed by the expenses; correlative prevention of an unfair
15 advantage to the others who are entitled to share in the fund and who should bear their
16 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.

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

18 The percentage approach is preferable to the lodestar because: (1) it aligns the interests of
19 class counsel and absent class members; (2) it encourages efficient resolution of the litigation by
20 providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial
21 resources. (*Id.* at pp. 1378–79.) California courts now routinely use the percentage of the common
22 fund approach to determine the award of attorney's fees. (*See, e.g., In re Pac. Enter. Sec. Litig.* (9th
23 Cir. 1995) 47 F.3d 373, 378–79 [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 what is a
26 reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee
27 award from a common fund in order to assure that the fees do not consume a disproportionate part of the
28 recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg,

1 Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys’ fees that are 50% of the fund are typically
2 considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively
3 small. (*Id.*; see also *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating
4 that most cases where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)
5 Here, Plaintiff request attorneys’ fees equal to 30% of the Gross Settlement Amount, which is in
6 line with the prevailing guidelines established under California case law and in academic literature
7 and is consistent with awards in California. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
8 n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar
9 method is used, fee awards in class actions average around one-third of the recovery.”].)

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

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

18 This Settlement is beneficial in that it limits the risk of continued expenses and consumption
19 of time, energy, and resources facing Defendants while at the same time rewarding Plaintiff’s
20 counsel for their decision to assume risk by taking on this matter. (Sung Decl., ¶ 30.) In fact,
21 prosecution of this action involved significant financial risk for Plaintiff’s counsel. (*Id.*) Plaintiff’s
22 counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*)
23 Once Plaintiff’s counsel undertook this litigation on behalf of the Aggrieved Employees, they
24 committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees
25 ahead of all other concerns. (*Id.*)

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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.) Plaintiff's counsel have been involved as lead counsel
6 or co-counsel in a multitude of class and representative actions resulting in beneficial results to class
7 members and aggrieved employees in California. (Sung Decl., ¶¶ 5-7.) Because it is reasonable to
8 compensate Plaintiff's counsel commensurate with their skill, reputation, and experience, Plaintiff's
9 counsel's requested fee award is supported here. Plaintiff's counsels' experience in wage and hour
10 class and representative actions was integral in evaluating the strengths and weaknesses of the case
11 against Defendants and the reasonableness of this Settlement. Practice in the narrow field of wage
12 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law
13 (state and federal), as well as the procedural law of representative action litigation.

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

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

1 Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

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

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

27 Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that “[a]ny
28 employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and

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

Here, Plaintiff’s counsel’s current lodestar is \$153,405.00 for 227.9 hours of work, broken down as:

Name	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
William C. Sung (15 th Year Attorney)	\$1,019	\$900	76.7	\$69,030
Tiffany L. Luu (6 th Year Attorney)	\$625	\$550	89.4	\$40,645
Joseph C. Ramli (5 th Year Attorney)	\$625	\$500	61.8	\$30,900
Guneez Ibrahim (1 st Year Attorney)	\$508	\$350	12.3	\$4,305

(Sung Decl., ¶¶ 31-33.)

Plaintiff’s counsel’s requested fee award represents a **negative 0.54** lodestar multiplier. (Sung Decl., ¶ 31.) Additionally, Plaintiff’s counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. (Sung Decl., ¶ 34.) These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration

1 process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding
2 the case. (*Id.*)

3 Plaintiff's counsel also bear the risk of taking whatever actions are necessary if Defendants
4 fails to pay. The amount of fees requested under the Settlement is warranted based on the
5 contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial benefit
6 conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the
7 skill displayed by Plaintiff's counsel. Thus, the request for attorneys' fees satisfies a lodestar check.
8 Accordingly, the Court should find that the circumstances of the present case justify an award of
9 30% of the Gross Settlement Amount for attorneys' fees.

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

11 Plaintiff's counsel is entitled to recover the out-of-pocket costs and expenses they
12 reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir.
13 2003) 327 F.3d 938, 974; Lab. Code § 2699(g)(1).) Under the proposed Settlement, Plaintiff's
14 counsel may request reimbursement of costs up to \$20,000.00. (Agreement, § 3.2.1.) Plaintiff's
15 counsel seek reimbursement of actual costs in the amount of \$13,582.22, including estimated future
16 costs in filing and delivering courtesy copies of this Motion and supporting papers (\$146.32), any
17 supplemental papers for this Motion (\$72.25), and Administrator's declaration of compliance re
18 settlement administration (\$72.25). (Sung Decl., ¶ 17; **Exh. 4.**) These expenses were reasonably
19 necessary to the litigation and were actually incurred. Moreover, these expenses are below the
20 maximum amount allowed in the Settlement, and the remainder will be allocated to the Net
21 Settlement Amount. Therefore, costs should be reimbursed in full, up to the maximum amount
22 allowed in the Settlement.

23 **D. THE COURT SHOULD APPROVE THE REQUESTED PLAINTIFF'S**
24 **ENHANCEMENT AWARD.**

25 Courts routinely approve enhancement payments to compensate named plaintiffs for the
26 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
27 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to named
28 plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.

1 1995) 901 F. Supp. 294 [approving \$50,000 service payment].) Indeed, “[i]ncentive awards are
2 fairly typical in class action cases.” (*Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948,
3 958.) The Court may award incentive payments to compensate Plaintiff for work done on behalf of
4 the class, to make up for financial or reputational risk undertaken in bringing the action. (*Id.* at 958-
5 59.)

6 Here, Plaintiff seeks an enhancement award of \$10,000.00 and Plaintiff and Plaintiff’s
7 counsel submit that this request is reasonable given Plaintiff’s efforts in this case and the risks
8 Plaintiff undertook on behalf of the State and Aggrieved Employees. (Burton Decl., ¶¶ 4-5; Sung
9 Decl., ¶ 35.) Plaintiff expended substantial time and effort on behalf of the State and Aggrieved
10 Employees, including providing factual information and documents to counsel, attending meetings
11 with counsel to discuss the claims and theories at issue in the litigation, responding to a significant
12 amount of written discovery requests, preparing for and attending her deposition, and otherwise
13 actively participating in the prosecution of her claims. (Burton Decl., ¶ 4.) As a result of Plaintiff’s
14 efforts, she has helped the State and Aggrieved Employees recover over \$131,384.45 in civil
15 penalties.

16 **E. THE COURT SHOULD APPROVE THE SETTLEMENT**
17 **ADMINISTRATION FEES**

18 Pursuant to the terms of the Settlement, the fees and costs of the Administrator, are to be
19 paid out of the common fund. (Agreement, § 3.2.2.) The settlement administration fees are based on
20 a flat-sum amount of \$11,700.00. (*Id.*; Admin. Decl., ¶¶ 6-7, Exh. C.) The Administrator’s duties
21 include, but are not limited to, receiving and analyzing the Aggrieved Employee list, processing
22 Aggrieved Employees’ names and addresses against the National Change of Address database
23 (“NCOA”) prior to mailing, setting up and managing a Qualified Settlement Fund (“QSF”) Escrow
24 Account, calculating Individual PAGA Payments to Aggrieved Employees, disbursing settlement
25 payments to Aggrieved Employees, the State of California, and Plaintiff’s counsel including
26 necessary tax forms (i.e., 1099 Forms) and PAGA settlement explanatory letter, tendering funds
27 from uncashed checks to the Bay Area Legal Aid or the Unclaimed Property Fund to be held in the
28 name of the Aggrieved Employee, and submitting final accounting to the Court. (Admin Decl., ¶¶

1 4-6, Exh. C; Agreement, §§ 4.2-4.4.4.) All of these duties are included in the agreed-upon flat fee of
2 \$11,700.00. Thus, the Administrator's fees should be approved.

3 **F. PROOF OF SERVICE OF SETTLEMENT AND ALL MOVING PAPERS ON**
4 **THE LWDA**

5 On August 31, 2026, Plaintiff's counsel served the LWDA via filing through its online portal
6 at <https://dir.govfa.net/432> (Proposed Settlement of PAGA Case) with a copy of the fully executed
7 Agreement, Motion for Approval of PAGA Settlement, all supporting declarations, and the
8 Proposed Judgment and Order. (Sung Decl., ¶ 36, **Exh. 5** – LWDA Filing Confirmation.)

9 **IV. CONCLUSION**

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

12
13 DATED: August 31, 2026

Respectfully submitted,

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

15
16 By: 

17 William C. Sung

18 Tiffany L. Luu

19 Joseph C. Ramli

20 Attorneys for Plaintiff AMOURAFINA BURTON
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