LAUREL EMPLOYMENT LAW
Joshua White (State Bar No. 278166)
josh@laurelemploymentlaw.com
Marta Manus (State Bar No. 260132)
marta@laurelemploymentlaw.com
6309 Van Nuys Boulevard, Suite 111
Van Nuys, California 91401-6630
Telephone: (310) 929 - 6371

Attorneys for Plaintiff,
IRWIN SURIANO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

IRWIN SURIANO, an individual, Plaintiff, vs. TRUE PWR, LLC, a Deleware limited liability company; and DOES 1 – 10, inclusive, Defendants.	Case No.: CVRI2402428 ASSIGNED FOR ALL PURPOSES TO: The Honorable ~~Chad Firetag~~ Harold Hopp ~~Department 3~~ Department 1 **REPRESENTATIVE ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: January 22, 2025 Time: 8:30 a.m. ~~Dept: 3~~ Dept. 1 Complaint filed: May 23, 2024

NOTICE OF MOTION AND MOTION

To the Court, the parties, and counsel of record:

Please take notice that, on January 22, 2025 at 8:30 a.m., or as soon thereafter as the parties may be heard, in ~~Department 3~~ Department 1 of the Superior Court, County of Riverside, 4050 Main Street Riverside, CA 92501, Plaintiff, IRWIN SURIANO ("Plaintiff") will and hereby do move this Court, pursuant to Labor Code §2699(1)(2) for an entry of order and judgment approving the settlement of the Private Attorney

General's Act claims against Defendant, TRUE PWR, LLC, a Delaware limited liability company ("Defendant")

The motion will be based upon this notice, the attached Memorandum of Points and Authorities, the Declaration of Marta Manus, all exhibits thereto including the fully executed settlement agreement, the PAGA Notice, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court at the time of the hearing.

DATED: December 16, 2024

LAUREL EMPLOYMENT LAW

Joshua White, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff, IRWIN SURIANO

<u>**TABLE OF CONTENTS**</u>

TABLE OF AUTHORITIES

Federal Cases

State Cases

Statutes

California Labor Code

Rules

I. INTRODUCTION

Plaintiff, Irwin Suriano ("Plaintiff") submit this Memorandum of Points and Authorities in support of Plaintiff's Motion for Approval of the Private Attorneys General Act of 2004, ("PAGA") Settlement. Plaintiff and Defendant, TRUE PWR, LLC ("Defendant") have documented the proposed Settlement in the Private Attorneys General Act Settlement and Release ("Settlement Agreement" or "SA"), attached as Ex. 1 to the Declaration of Marta Manus in Support of Plaintiff's Motion for Approval of PAGA Settlement, filed herewith ("Manus Decl.").

Pursuant to the terms of this Settlement, Defendant will pay a Gross Settlement Amount of $300,000.00[1], none of which will revert to Defendant. Manus Decl. ¶2, SA ¶¶17, 40. Subject to Court approval, from the Settlement Payment, the following shall be deducted: 1) administration expenses of $3,375 to Apex Class Action Administration; 2) PAGA Counsel's attorneys' fees of up to $99,990, and litigation costs not to exceed $9,500 (current costs are $8,941). The remaining sum estimated at $187,694.00 will be disbursed as directed by the PAGA (Labor Code §2699(i)) with $122,001.10 (65%) paid to the Labor and Workforce Development Agency ("LWDA"); and, $65,692.90 (35%) distributed proportionately to 66 non-exempt employees ("aggrieved employees") based on the number of Pay Periods each worked during the period from July 5, 2023, to October 21, 2024. ("PAGA Period"). Manus Decl. ¶¶3, 5; SA¶¶1.10, 1.18.

The superior court "shall review and approve any settlement of any civil action filed pursuant to" the Private Attorneys General Act of 2004, Labor Code §2699(l)(2). The Settlement was reached through extensive, arms'-length, informed negotiations, with the help of an experienced mediator following an informal exchange of information and data. Manus Decl. ¶4. The result is fair, adequate, reasonable, and fulfills PAGA's purposes of enforcing California's laws which collect civil penalties on behalf of the

---

[1] The Total Settlement Amount of $325,000.00 includes an Individual Settlement Payment of $25,000.00 for Plaintiff's general release of his individual claims, not subject to Court approval and not included in the Gross Settlement Amount. Manus Decl. ¶4; SA ¶1.24.

State. Plaintiffs request the Court approve this PAGA Settlement, order it implemented according to the terms of the Agreement, and enter Final Judgment.

II. THE PARTIES AND AGGRIEVED EMPLOYEES

Defendant is a solar energy company providing solar services to residential and commercial customers in California. Manus Decl. Decl. ¶6.

Plaintiff Irwin Suriano ("Suriano") worked for Defendant as a Solar Installer from approximately April 2023 until February 2024. Aggrieved Employees means "all non-exempt employees employed by TRUE PWR in California who worked for TRUE PWR during the PAGA Period (July 5, 2023, through October 21, 2024)." Manus Decl. Decl. ¶6; SA ¶1.4.

III. FACTUAL AND PROCEDURAL HISTORY

On May 2, 204, Plaintiff filed an individual complaint alleging various violations of the Labor Code. On July 5, 2024, Plaintiff gave written notice to the Labor Workforce and Development Agency ("LWDA") and to Defendant notifying them of his intent to pursue PAGA civil penalties pursuant to Labor Code §2698, *et seq.*, for the same violations of the Labor Code. Manus Decl. ¶7.

Shortly thereafter, the parties agreed to attend mediation to resolve Plaintiff's individual claims as well as the PAGA claims on behalf of all allegedly Aggrieved Employees. The parties engaged in extensive informal discovery with Defendant providing payroll and timekeeping data for all aggrieved employees, which allowed them to prepare for a meaningful and informed session at mediation. In this way, each side would be able to understand the nature of the allegations, the scope of potential liability, and the extent of civil penalties claimed. Plaintiff's counsel reviewed and analyzed the data and calculated civil penalties owed to the aggrieved employees for the PAGA period. Manus Decl. ¶8.

The parties agreed that Plaintiff would not file an amended complaint adding claims under the PAGA until after the mediation was concluded. On October 21, 2024, the parties participated in a full-day mediation with mediator, Barbara A. Reeves, which resulted in the parties executing a Memorandum of Understanding. Thereafter, the parties worked together to memorize the terms of their agreement in a fully executed Settlement Agreement. On October 29, 2024, Plaintiff filed a First Amended Complaint ("Operative Complaint") adding claims under the PAGA for civil penalties. Manus Decl. ¶9.

IV. <u>PAGA'S PURPOSE AND PROCEDURE</u>

A. PAGA Actions are Brought on Behalf of the State of California

"The California legislature enacted PAGA after a 2004 budget shortfall that led to understaffing in the Labor and Workforce Development Agency ("LWDA") and insufficient resources to enforce the Labor Code. PAGA was intended to address these problems and ensure more vigorous enforcement of the labor and employment laws." (citations omitted). *Tseng v. Nordstrom, Inc*., 2016 U.S. Dist. LEXIS 176790, *13-14.

"[T]he purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.... Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Id.*

"The Legislature has made clear that an action under the PAGA is an enforcement action, with the aggrieved employee acting as a private attorney general to collect penalties from employers who violate labor laws. Such an action is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. Restitution is not the primary object of a PAGA action, as it is in most class actions. The primary purpose of PAGA is to ensure compliance with the law; restitution is not the object of a PAGA action." *Franco v. Athens Disposal Co., Inc.*, 171 Cal.App.4th 1277, 1300 (2009).

PAGA "deputizes" citizens as private attorneys general to enforce the Labor Code on behalf of the State of California. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489. "By deputizing aggrieved employees, the California Legislature intended to create incentives for non-governmental actors to enforce the law in a growing labor market that could not be effectively controlled by public agents." *Tseng, supra,* at *13.

A plaintiff does not bring a PAGA claim on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Id.*, at 986; *see also Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles*, LLC (2015) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego County* (2015) 234 Cal.App.4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc.* (2015) 232 Cal.App.4th 1214, 1222 ("[A] PAGA action is a dispute between an employer and the State agency.").

A PAGA plaintiff represents "the same legal right and interest as state labor law enforcement agencies," and seeks the same civil penalties that could have been collected by the LWDA. *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 ("PAGA plaintiffs do not have property rights in their cases.").

B. Plaintiffs Exhausted the PAGA's Administrative Prerequisite

A PAGA action is commenced by the aggrieved employee or representative giving written notice to the LWDA and employer of the specific provisions of the Labor Code alleged to have been violated ("PAGA Notice"). Labor Code §2699.3(c)(1). The LWDA has 65 days to inform the claimant whether it intends to investigate the violations alleged. If the LWDA does not serve notice, and the employer does not cure the defect(s), a civil action may be initiated 65 days after service of the PAGA Notice. Labor Code §2699.3(c)(2).

On July 5, 2024, Plaintiff sent written notice to the LWDA and Defendant detailing the factual allegations and legal theories. A notice of a cure was not provided by Defendant, and the LWDA did not provide notice of its intent to investigate the charges. Manus Decl. ¶7. **Ex. 2** – PAGA Notice.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Mediation

On October 21, 2024, the parties engaged in good faith, arms'-length and informed negotiations facilitated by Barbara A. Reeves of JAMS, Inc., an experienced and well-regarded wage and hour mediator. Manus Decl. ¶ 8. The parties reached an agreement in principle that day and executed a Memorandum of Understanding. Manus Decl. ¶ 8. The parties worked diligently thereafter to negotiate the remaining terms of the PAGA Settlement presented for approval; a fully executed settlement agreement was reached on November 4, 2024. Manus Decl. ¶9, **Ex.1** – Settlement Agreement.

B. Monetary Relief

Pursuant to the terms of the PAGA Settlement, Defendant will pay a Total Settlement Amount of $325,000.00. The Total Settlement Amount means the total amount Defendant agrees to pay, including the Gross Settlement Amount of $300,000.00 and Plaintiff's Individual Settlement Payment Amount of $25,000.00. Manus Decl. ¶11; SA ¶1.29.

The Gross Settlement Amount of $300,000 will be used to pay the following: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment. Manus Decl. ¶5; SA ¶1.10. Of the Gross Settlement Amount, $187,694.00 will be disbursed pursuant to PAGA i.e., $122,001.10 (65%) will be paid to the LWDA, and $65,692.90 (35%) will be paid to Aggrieved Employees based on the number of pay periods worked during the PAGA period. Labor Code §2699(i). Manus Decl. ¶ 11; SA ¶3.2.4.1. To streamline the settlement process, the parties agreed to distribute the PAGA penalties on a pro-rata basis based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. Manus Decl. ¶ 11; SA ¶3.2.4.1. Based on the 35% allocation, with an aggregate 1,561 Pay Periods worked by all Aggrieved Employees, each will receive an estimated $42.08 per pay period. Manus Decl. ¶5; SA ¶¶4.1.

Accordingly, subject to Court approval, Plaintiffs proposes the $300,000 Gross Settlement Amount be distributed as follows:

1.	<u>SETTLEMENT PAYMENT</u>:	$	300,000.00
	PAGA Counsel's Fees:	-$	99,990.00
	PAGA Counsel's Litigation Costs:	-$	8,941.00

	Administration Payment:	-$	3,375.00
2.	PAGA PENALTIES:	**$**	187,694.00
	Labor Workforce & Development Agency: 65%	$	122,001.10
	Aggrieved Employees: 35%	$	65,692.90

C. Scope of Release

The PAGA Settlement provides for a release of only claims alleged in the operative complaint. Specifically, the Released Claims release the following:

> Any and all claims for civil penalties under PAGA that were actually alleged or that could have been alleged in the lawsuit by Plaintiff, on behalf of the State of California, arising out of his employment with Defendant based on the facts alleged in the Operative Complaint as follows: (a) penalties pursuant to Labor Code sections 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 2802 and/or 2699, 2699.3, *et seq*.; the applicable Industrial Wage Order(s); 29 U.S.C. section 207, and California Business and Professions Code Sections 17200, *et seq*.; (b) claims for the attorney's fees and costs incurred in the prosecution of this lawsuit on behalf of the Aggrieved Employees; (c) and other remedies, penalties, or interest available under the PAGA based on the facts alleged in the Operative Complaint and/or the PAGA Notice filed by Plaintiff on July 5, 2024. This Release applies to the PAGA Period (July 5, 2023, through October 21, 2024) only. SA ¶5.2.

Because a PAGA action is brought on behalf of the government, a "judgment [ ] is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009). Non-party aggrieved employees are not bound by the judgment except as to civil penalties. *Id*., at 987; see also, Labor Code §2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.").

D. Settlement Administration

Following Court approval, Defendant will provide the Administrator with the Aggrieved Employee Data (the full name of each Aggrieved Employee, the last known mailing address of each Aggrieved Employee; the social security number of each Aggrieved Employee; and the number of PAGA Pay Periods that each Aggrieved Employee worked during the PAGA Period). SA ¶¶1.5, 4.2. Before mailing checks to the Aggrieved Employees, the Administrator will search the National Change of Address database to update stale addresses and then mail the Aggrieved Employees' Individual PAGA Payment. SA ¶¶51(b), 52. Included with the settlement checks will be a settlement notice letter informing the Aggrieved Employees of the settlement and their respective payment. If any check remains uncashed after 180 days of mailing, it will be voided and the value of the uncashed check will be forwarded to the State of California, Controller's Office, Unclaimed Property Division for further handling on behalf of the Aggrieved Employee. Manus Decl. ¶¶12, **Ex. 3** – Settlement Notice Letter; 13; SA ¶ 58.

The LWDA was provided with the Motion for Approval of PAGA Settlement and the Agreement. The LWDA raised no objection. One the same date this motion and its supporting documents are filed with the Court, they will be serviced upon Defendant and provided to the LWDA via the LWDA's website, using the appropriate intake form. Manus Decl. ¶25.

VI. <u>THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED</u>

A. Class Action Standards Do Not Govern Approval of PAGA Settlements

A proposed PAGA settlement must be submitted simultaneously to the Court and to the LWDA to allow comment if the Agency desires. Courts "review and approve any penalties sought" and may exercise their discretion to lower the amount of penalties awarded "'if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'" *Ramirez v. Benito Valley Farms, LLC,* 2017 U.S. Dist. LEXIS 137272, *6-8.

"Because state law enforcement agencies are the 'real parties in interest' for PAGA claims, the Court's task in reviewing the settlement is to ensure that the state's interest in enforcing the law is upheld."

"Other than the provisions discussed above, however, the PAGA does not establish a standard for evaluating PAGA settlements." *Id.*

In contrast to a class action settlement, the Parties are not obliged to "satisfy class action requirements," when seeking approval of a PAGA settlement. *Arias*, *supra*, at 980-988; *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1121 (9th Cir. 2014). (PAGA actions are not class actions under state law). Unlike class actions, there is no requirement in a PAGA settlement, and no mechanism, for a court to conduct a two-step settlement approval review. "Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to 'opt-out' or 'contest a settlement.'" *Ochoa-Hernandez v. Cjaders Foods, Inc.* 2010 U.S. Dist. LEXIS 32774, *13 (N.D. Cal. April 2, 2010).

There is no binding authority identifying the proper standard of review of PAGA settlements to be employed by the court. *Tenorio v. Gallardo*, 2019 U.S. Dist. LEXIS 169313, at *6 (E.D. Cal. Sept. 30, 2019). One approach in this still-emerging area, which courts have found consistent with the LWDA's approach, is simply to "approve a settlement of PAGA claims upon a showing that the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals." *Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6 (E.D. Cal. February 2, 2017).

B. The Settlement Satisfies PAGA's Purpose and the State's Interest

"A PAGA action is at the heart of a civil enforcement action filed on behalf of and for the benefit of the state, not a claim for class relief." *Baumann, supra,* at 1124. The Court's focus is not the amount aggrieved employees ultimately receive because of a settlement, but on whether the total settlement achieves PAGA's objectives. Here, the proposed Settlement fulfills PAGA's purpose by (1) enforcing the law, (2) collecting penalties from an employer and recovering $187,135.00 civil penalties, of which $121,637.75 (65% of the penalties) are on behalf of the State of California for purposes of enforcement and education; and (3) distributing $65,497.25 (35% of the penalties) to the Aggrieved Employees, Labor Code §2699(i).

The Settlement also accomplishes PAGA's objective of "deterring noncompliance" with the Labor Code, by protecting workers from "unlawful conditions," and protecting employers "'who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.'" *O'Connor v. Uber Techs., Inc*., 201 F. Supp. 3d 1110, 1133 (2016).

C. The Settlement is a Reasonable Compromise of PAGA Claims

The PAGA allows aggrieved employees to recover any civil penalties provided by the Labor Code that are recoverable by the LWDA. Labor Code. §2699(a). "Under PAGA, a Plaintiffs may bring a representative action as an aggrieved employee on behalf of themselves and other current or former employees and may seek civil penalties for Labor Code violations." *Willner v. Manpower, Inc.,* 35 F. Supp. 3d 1116 (N.D. Cal. 2014). When the Labor Code section violated "provides for a civil penalty to be assessed and collected by the LWDA," the PAGA allows an employee to recover that penalty. Labor Code §2699(a). When the violated section does not specifically provide a "civil penalty," an employee may recover $100 for each aggrieved employee per pay period for the initial violation and $200 for each employee per pay period for each subsequent violation. Labor Code §2699(f)(2).

Here, Plaintiff seeks penalties for alleged violations of the Labor Code as set forth in the operative second amended complaint and specifically: §§203, 226, 226.7, 510, 512, 1174, 1194 and 2802 of which 65% will be paid to the State of California's Labor Workforce and Development Agency and 35% will be paid to the PAGA Employees pursuant to Labor Code §2699(i). Plaintiff is also entitled to recovery of attorney's fees and costs pursuant to the PAGA. Labor Code §2699(g)(1).

Liability under the PAGA is triggered for each pay period Defendant allegedly failed to provide a meal or rest period, allegedly failed to pay all proper wages due during employment, allegedly failed to pay timely final wages, and allegedly failed to issue accurate and itemized wage statements. Defendant need only to have violated the Labor Code at least once during a pay period to impose liability.

///

D. PAGA Penalties

Based on data produced, Plaintiff's counsel analyzed the data provided by Defendant, which included 1,561 pay periods worked by 66 employees. Manus Decl. ¶14. Plaintiff used the damage model based on the actual timekeeping and payroll data provided by Defendant for settlement purposes. *Id*.

For mediation purposes, PAGA penalties were calculated using the initial violation rate of $100 per pay period each for each claim. In evaluating the total value of the PAGA penalties, Plaintiffs had to consider that the award of PAGA penalties is uncertain, because the actual award is within the Court's discretion. As such, maximum exposure was discounted for several reasons, i.e., the risk of not proving underlying violations, and Court's authority to reduce penalties, as long as not to "zero." *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012). *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 517 (2018) (Plaintiff requested "nearly $70 million in penalties," trial court's $150,000 award upheld on appeal). Manus Decl. ¶15.

The Court also has the authority to reduce or eliminate any civil penalty deemed punitive or confiscatory under the circumstances. Labor Code §2699. Under all the circumstances here, regardless of liability proven or damages awarded, it would be extremely unlikely to obtain the full amount of PAGA penalties, and perhaps no award.

As explained in detail below, allegedly Aggrieved Employees could claim a maximum PAGA penalty of $943,200.00. However, Defendant's potential exposure for PAGA penalties was reduced by approximately 25% to account for the risk associated with the judge's discretion to reduce penalties. Then, the amount of $707,400.00 was discounted again by 50% to account for risks associated with litigation and proving the underlying claims at trial. Accordingly, Plaintiff calculated the final realistic exposure for PAGA civil penalties as $353,700.00. Manus Decl. ¶16.

Considering the realistic maximum reasonable penalty of $353,700.00, a Gross Settlement amount of $300,000, with PAGA penalties of $187,694.00 is a fair and reasonable amount warranting approval. *Id*. The maximum realistic total exposure for PAGA civil penalties was calculated for each claim as described below.

1. PAGA Penalties for Unpaid Wages (Minimum and Overtime) – Lab. Code §§510, 1194, 1197

Plaintiff's claim for failure to pay minimum and overtime wages is predicated on Defendant's alleged unlawful practice to auto-deduct time for meal periods that Defendant knew were not taken. Plaintiff and other Aggrieved Employees were not able to take meal periods, including second meal periods yet was auto-deducted one (1) hour per shift (30-minutes for two meal breaks) and failed to pay any wages for hours worked during falsely recorded meal periods.

Plaintiff calculated the total maximum and reasonable exposure for civil penalties would be for this violation to be $156,100 (1,561 pay periods x $100). Manus Decl. ¶17.

2. Failure to Provide Compliant Meal and Rest Periods

Plaintiff alleged that allegedly Aggrieved Employees were not provided off-duty, uninterrupted, timely meal periods before the end of their fifth hour of work and similarly were not provided timely, off-duty rest periods in violation of Labor Code §226.7 and 512.

PAGA provides for a $100 penalty rate for an initial violation and $200 penalty rate for each subsequent violation per affected pay period pursuant to Labor Code §2699(f)(2); a violation of Labor Code §512 provides for a $50 penalty rate per affected pay period pursuant to Labor Code §558. Plaintiff used the default civil $100 penalty provided by the PAGA for each of the underlying violations of the Labor Code per pay period. Plaintiff worked a total of thirty (30) pay periods during the one-year PAGA statute of limitations.

Plaintiffs also calculated the civil penalty for failure to provide rest period. The failure to provide rest periods is a violation of Labor Code §226.7 and 512. Under Labor Code §226.7, the PAGA provides for a $100 penalty rate for an initial violation and $200 penalty rate for each subsequent violation per affected pay period pursuant to Labor Code §2699(f)(2). Accordingly, Plaintiff estimated Defendant's maximum exposure for civil penalties for the failure to provide meal periods in violation of Labor Code

§512 to be $156,100 (1,561 pay periods x $100). Manus Decl. ¶18. Plaintiff estimated Defendant's maximum exposure for civil penalties for the failure to provide rest periods in violation of Labor Code §512 to be $156,100 (1,561 pay periods x $100). *Id*.

3. Failure to Record Hours Worked

Plaintiff alleged that Defendant failed to record the beginning and ending time of each shift, including meal periods in violation of Labor Code §1174. Again, Plaintiff used the default $100 penalty per pay period. Plaintiff estimated Defendant's maximum exposure for civil penalties for violation of Labor Code §1174 to be $156,100 (1,561 pay periods x $100). Manus Decl. ¶19.

4. Wage Statements

Plaintiff alleged derivative violations of Cal. Labor Code §226 based on the practices described above, Plaintiff is entitled to recover penalties provided by Labor Code §226.3, which provides a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. Cal. Labor Code §226.3.

Derivative penalties could not be recovered due to a failure to pay meal period premium wages *Naranjo v. Spectrum Security Services, Inc*. (2019) 40 Cal.App.5th 444; *Betancourt v. OS Restaurant Services, LLC* (2020) 49 Cal.App.5th 240.

In evaluating the amount of civil penalties potentially owed for allegedly failing to provide wage statements due to purportedly failing to pay all wages and record all hours worked, Plaintiff believed it would be unlikely to obtain both Labor Code §226.3 penalty for derivative wage statement violations. Therefore, Plaintiff used the default $100 penalty per pay period. Plaintiff estimated Defendant's maximum exposure for civil penalties violation of Labor Code §226 to be $156,100 (1,561 pay periods x $100). Manus Decl. ¶12.

///

5. Failure to Reimburse Business Expense

Labor Code §2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Employers must always reimburse employees for the "mandatory" use of personal cell phones pursuant to section 2802. *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding that employers that require employees to use personal cell phones for work-related calls must pay some reasonable percentage of the employee's cell phone bill).

Plaintiff alleged employees were required to use personal cell phones for work purposes without reimbursement, including downloading mobile applications on personal cell phones. Again, Plaintiff used the default $100 penalty per pay period. However, arguably, the reimbursement would be limited to a monthly basis rather than pay period and would potentially be lower. Plaintiff estimated Defendant's maximum exposure for civil penalties for the violation of Labor Code §2802 to be $156,100 (1,561 pay periods x $100). Manus Decl. ¶21.

6. Failure to Timely Pay Wages Due Upon Termination of Employment

California Labor Code section 203 governs the payment of wages upon termination. An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminated. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days. Labor Code §203. This violation is derivative and requires a plaintiff to prevail on the underlying wage claim and show the violation was "willful." Defendant denied that it willfully failed to timely pay wages to any of the allegedly Aggrieved Employees.

Initial violation rates were used, based on Defendant's argument, "courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code." *Vieyara-Flores v. Sika Corp.,* 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019). Plaintiff's calculation for violation of Labor Code §203 was based on 66 terminated employees during the PAGA Period and amounted to $6,600.00 ($100 x 66). Manus Decl. ¶22.

E. Judicial Discretion in Reducing Civil Penalties

Even though Defendant's potential exposure was initially calculated at $943,200.00, this was calculated assuming that Plaintiff received 100% of the maximum rate for each violation. However, Plaintiff also had to consider the fact that PAGA penalties are subject to review and reduction at the Court's discretion. Courts routinely award far less than the statutory maximum amount of penalties, even where an underlying violation of the Labor Code is found. For example, in *Fleming v. Covidien*, the court calculated the civil penalties for an employer providing 8,000 non-compliant wage statements to be $2.8 million ($100 per violation). *Fleming v. Covidien, Inc*. (C. D. Cal. August 12, 2011) 2011 U.S. Dist. Lexis 154590 at *3-4, vacated and remanded in part on other grounds, 546 Fed. Appx. 616 (9th Cir. 2013). Although the court found that the employer had violated Labor Code §226, it noted that none of the employees suffered any injury because of this non-compliance (and none complained of the issues prior to filing suit.) *Id*. Pursuant to Labor Code §2699(e)(2), the court reduced PAGA civil penalties from $2.8 million to $500,000. *Id*.

In another PAGA case, Defendant's potential exposure on the alleged claims was discounted for risks which included not proving the underlying Labor Code violations, as well as the Court's authority to completely reduce penalties, as long as not to "zero." *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012); *Carrington v. Starbucks Corp*., 30 Cal.App.5th 504 (2018) (the penalty rate was dropped to $5.00 per pay period.)

Based on these risks, Defendant's potential exposure for PAGA penalties was reduced by approximately 25% to account for the risk associated with the judge's discretion to reduce penalties. Then, the amount of $707,400.00 was discounted again by 50% to account for risks associated with litigation and proving the underlying claims at trial. Accordingly, Defendant's maximum reasonable exposure for liability for civil penalties was calculated to be $353,700.00.[2] Manus Decl. ¶16.

This PAGA amount is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) ($10,000 PAGA penalties in settlement of $900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) ($10,000 PAGA penalties, $1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) ($10,000 PAGA penalties, $2.5m settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 31, 2012) ($10,000 PAGA, $3.7m settlement).

VII. THE ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

PAGA Counsel requests $99,990.00 for their attorneys' fees, (33.33% of the Gross Settlement Amount), and up to $9,500.00 in litigation costs. As of the date of the filing of this Motion and to bring this settlement to a final closure, PAGA Counsel will have incurred $57,570.00 in attorneys' fees and $8,940.95 in litigation costs. PAGA Counsel have worked 88[3] hours prosecuting this Lawsuit and calculate the resulting lodestar fee on those hours at $57,570.00. The hours expended were reasonable considering the complexity and duration of the litigation. Manus Decl. ¶23.

PAGA provides for reasonable attorney's fees and costs, but "does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims." "Under Ninth Circuit [and California] law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method" to determine a reasonable attorney's fee." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th

---

[2]Calculated as follows: $943,200.00*.75 (25% discount) = $707,400.00; $707,400.00*.50 (50% discount) = $353,700.00.

[3]Included in the total hours is an additional 15 hours, following the filing of this motion, will be worked to provide supplemental information and documentation should the Court request it, interact with Defense counsel and the Administrator with respect to funding and distribution, approval of checks, transmittal documents, responding to employee inquiries, handling uncashed checks, etc.

480, 503 (2016) *Ramirez, supra,* at *18. California trial courts may use cases applying Federal Rule 23 for guidance in class issues. *Vasquez v. Sup. Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 27 (2000).

The California Supreme Court affirmed the granting of attorneys' fees in common fund cases based on a percentage of the recovery. *Laffitte, supra,* at 503. A fee award based on a percentage of the common fund recovery here is proper as it spreads the attorneys' fees among all beneficiaries of the fund, aligns the incentives between Plaintiff's counsel, the State, and the aggrieved employees, is a better approximation of the market conditions in a contingency case, and encourages counsel to seek early settlement and avoid unnecessarily prolonging the litigation. *Id*. The Court also approved an optional lodestar cross-check. *Id*. at 504.

A. The Results Achieved Support the Fee Request

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS 13627, at *27 (C.D. Cal. June 10, 2005) (*citing Hensley v. Eckerhart*, 461 U.S. 424 (1983)). In the face of uncertainties associated with continued litigation of Plaintiff's claims, Defendant's vigorous denials and affirmative defenses, there is no question the results achieved are excellent. Counsel fulfilled the purpose of PAGA by obtaining $187,135.00 in penalties to distribute to the State, the LWDA for enforcement and education, and to the Aggrieved Employees, as well as to compensate the PAGA Counsel representing the interests of the State.

B. Attorneys' Fees of 33.33% of the Settlement Payment is a Reasonable Fee

Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, n.11 (numerous studies have shown that "fee awards in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common

Problems: Fee Objections and Class Counsel's Response, 17 Rev. Litig. 525, 546 (1128); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1126) (finding attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement").

PAGA Counsel's request for 33.33% of the common fund created falls in the lower range of fee percentage awards which commonly range from 20% to 50% of a common fund. The requested sum constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation, strictly on a contingent basis, and for the results achieved for the State, and the Aggrieved Employees, as well as Defendant's current and future employees. Numerous state and federal courts in California routinely approve fee requests equal to or more than the amount sought here. Manus Decl. ¶24. Some courts have found an award of 33% of the common fund represents the "benchmark" in California. *Smith v. CRST Van Expedited*, Inc., 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013) ("These percentages compare favorably with" the California (33%) benchmark.); *Dennis v. Kellogg Co.*, 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013). PAGA Counsel's fee request is in line with awards in similar cases in and demonstrates PAGA Counsel's fee request is consistent with market rates and is reasonable.

C. Although Not Required, a Lodestar Cross-Check Shows the Fee is Reasonable

PAGA Counsel seeks approval of attorneys' fees based on a percentage of the recovery, not a lodestar. While a percentage fee may be cross-checked against a lodestar increased by a risk multiplier, courts are not required to engage in this exercise, and many California courts decline to do so. See, e.g. *Glass v. UBS Financial Services, Inc*., No. 06-4066-MMC, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) (finding "no need to conduct a lodestar cross-check [as] [c]lass counsel's prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded"); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 WL 10483569 (E.D. Cal. Sept. 2, 2011) ("A lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.")

Where the cross-check is used, the "calculation need entail neither mathematical precision nor bean-counting" and is not intended to be a "full-blown lodestar inquiry." "Where the use of the lodestar method is used as a cross-check, it can be performed with a less exhaustive cataloguing and review of counsel's hours." *Barbosa v. Cargill Meat Solutions Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

The lodestar method is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Staton*, 327 F.3d at 965. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900.

PAGA Counsel have worked 88 hours prosecuting this Lawsuit and calculate the resulting lodestar fee on those hours at $57,570.00. The hours expended were reasonable considering the complexity and duration of the litigation. Manus Decl. ¶23.

D. PAGA Counsel's Hourly Rates Are Reasonable

Counsel is entitled to hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *Children's Hospital and Med. Center v. Bonta*, 97 Cal.App.4th 740, 783 (2002). When determining reasonable hourly rates, Courts may consider the attorney's skill and experience, nature of the work performed, relevant area of expertise, and customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal.App.4th 629, 632 (1128). Prior awards of counsel's rates are strong evidence of reasonableness. *Margolin v. Regional Planning Commission*, 134 Cal.App.3d 999, 1005 (1982).

PAGA Counsel's skill and experience support their hourly rates and are in line with rates typically approved in wage and hour class action and representative action litigation in California. Manus Decl. ¶23.

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Court approve the PAGA Settlement.

PAGA Counsel will provide this PAGA Approval Motion to the Labor Workforce and Development Agency as required, via its website on the date the motion is served and filed with the Court.

DATED: December 16, 2024

LAUREL EMPLOYMENT LAW

Joshua White, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff, IRWIN SURIANO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
Iwrin Suriano v. TRUE PWR, LLC, et al; Case No: CVRI2402428

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6309 Van Nuys Blvd, Suite 111 Van Nuys, CA 91401.

On December 16, 2024, I served the foregoing document(s) described as:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

on all interested parties in this action as set forth on the attached service list in the following manner:

MANDEEP S. RUPAL, ALEXANDER W. RICHTER
LAW OFFICE OF MANDEEP S. RUPAL
4740 Green River Rd., Suite 209
Corona, CA 92878
Email: mrupal@rupallaw.com
alex@rupallaw.com
michelle@rupallaw.com
Counsel for Defendant TRUE PWR, LLC

☐ **BY MAIL**: I am familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United Parcel Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

☒ **BY ELECTRONIC SERVICE**: Only by emailing the document(s) listed above to the parties in this action using the email addresses identified on the attached Service List. During the period of National Emergency declared pursuant to the COVID-19 pandemic, as well as the Orders of the Governor of California and Mayor of Los Angeles, physical work in this office will cease, and electronic mail will be the preferred method of communication. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, on request only, upon a return to the office and the conclusion of the National Emergency and the above referenced Orders.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **FEDERAL:** I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Executed on December 16, 2024 at Los Angeles, California.

Lorrie Davila