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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DEVONTE ROJO, an individual, in his
representative capacity on behalf himself, the
State of California, as a private attorney general,

Plaintiff,

v.

FOREST LAWN MORTUARY, a California
corporation; FOREST LAWN MEMORIAL-
PARK ASSOCIATION, a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 23STCV02200

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Date: October 13, 2026
Time: 8:30 a.m.
Reservation ID: 714393221658

Judge: Michael Small
Dept.: 517

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Devonte Rojo (“Plaintiff”) seeks approval of the Amended PAGA Settlement
4 Agreement (“Agreement”)¹. The proposed settlement provides significant monetary relief—totaling
5 \$505,000.00—for approximately 724 Aggrieved Employees defined as all current and former non-
6 exempt employees who worked for Defendants Forest Lawn Mortuary and Forest Lawn Memorial-
7 Park Association (“Defendants”) in California at any time during the period from February 1, 2022,
8 through May 15, 2026 (“PAGA Period”). The Aggrieved Employees includes the Plaintiff.
9 (Agreement at §§ 1.4, 1.21.)

10 Importantly, this is only a settlement of the PAGA claim for civil penalties and is not a class
11 settlement and does not release the individual wage claims, if any, of the affected employees other
12 than Plaintiff himself. (Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348,
13 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable
14 under PAGA).)

15 If approved, the Aggrieved Employees and the California Labor Workforce and Development
16 Agency (“LWDA”) will share the remainder of the PAGA Penalties estimated to be Two Hundred
17 Eighty-One Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$281,166.67). The
18 PAGA Penalties shall be distributed, 75% to the LWDA (“LWDA Payment”) and 25% to the
19 Aggrieved Employees (“Individual PAGA Payment”). (Agreement § at 1.23.)

20 An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf
21 of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a
22 product of informed, adversarial, and non-collusive and mediated negotiations between experienced
23 counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement
24 approval. Accordingly, Plaintiff and Plaintiff’s Counsel respectfully request this Court grant approval
25 of the Agreement. (Declaration of Sydney Castillo-Johnson (“SCJ Dec.”) at ¶ 7.)

26
27
28 ¹ The Agreement is attached as Ex “1” to the Declaration of Sydney Castillo-Johnson (“SCJ Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendants

Defendants operate a funeral business in the state of California located in Los Angeles County, where Plaintiff worked. Plaintiff was employed by Defendants from January 2019 to February 2022. At all times during his employment, Plaintiff was classified by Defendants as a non-exempt employee and was entitled to legally mandated meal and rest periods, minimum wage and overtime compensation. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Serving with Forest Lawn" Employee Handbook. (SCJ Dec., ¶ 8; Declaration of Devonte Rojo ("DR Dec.") at ¶ 3.)

On February 1, 2023, Plaintiff filed a Notice of Violations ("PAGA Notice") with the LWDA and served the same on Defendants. The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. (SCJ Dec., at ¶ 9.)

On February 1, 2023, Plaintiff filed a Class Action Complaint for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226. (SCJ Dec., ¶ 10.)

On April 13, 2023, Plaintiff filed a First Amended Class Action Complaint alleging an additional cause of action for violations of PAGA. (SCJ Dec., ¶ 11.)

On June 21, 2023, Plaintiff filed a Second Amended Complaint ("Operative Complaint")

1 which dismissed the previously alleged class claims based on an arbitration agreement Plaintiff signed
2 and asserted one cause of action under PAGA. (SCJ Dec., ¶ 12.)

3 On October 6, 2023, Plaintiff filed his Demand for Arbitration with American Arbitration
4 Association Case No. 01-24-0004-4203. (SCJ Dec., ¶ 13.)

5 The Parties subsequently agreed to attend private mediation. To facilitate settlement
6 negotiations, Defendants agreed to informally produce documents and data points subject to the
7 mediation privilege, including but not limited to, the Aggrieved Employees’ time and payroll data,
8 and pertinent written wage and hour policies. As discussed *infra*, Plaintiff’s counsel retained the
9 forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll
10 data. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk*
11 *v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
12 (2008) 168 Cal.App.4th 116, 129-130. (SCJ Dec., ¶ 14.)

13 On August 18, 2025, the Parties participated in mediation presided over by Steven Serratore,
14 Esq., a mediator of wage and hour representative actions. The Parties’ mediation did not result in a
15 settlement of Plaintiff’s PAGA claims. However, the Parties continued settlement efforts and
16 ultimately reached a settlement after both sides agreed to a Mediator’s proposal. (SCJ Dec., ¶ 15.)

17 The Parties subsequently drafted and negotiated a long-form settlement which is the subject of
18 the instant motion. The Settlement was negotiated in light of all known facts and circumstances and
19 the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
20 representative claims and establishing manageability, the difficulty of proving Plaintiff’s claims in a
21 manageable trial, the merits of Defendants’ potential defenses, and the significant delay and potential
22 appellate issues related to the litigation – and was reached after extensive arm’s length negotiations,
23 with the assistance of Mediator Serratore. (SCJ Dec., at ¶ 16.)

24 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by
25 Plaintiff on behalf of himself, the LWDA, and the State of California. This is only a Settlement of the
26 PAGA claims for civil penalties and is not a class settlement and does not release the individual claims,
27 if any, of the Aggrieved Employees, other than Plaintiff. This Settlement does not release any claim
28

1 that is not a PAGA claim.² Nor does this Settlement waive Defendants’ right to assert *res judicata* or
2 other available defense to any asserted claim or lawsuit. (SCJ Dec., at ¶ 17.)

3 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with
4 the laws identified in the Operative Complaint and deny any and all liability for the causes of action
5 alleged. (SCJ Dec., ¶ 18.)

6 The Parties, Plaintiff’s Counsel and Defense Counsel represent that they are not aware of any
7 other pending matter or action asserting claims that will be extinguished or affected by the Settlement.
8 (SCJ Dec., ¶ 19.)

9 Pursuant to California Labor Code Section 2699(s)(2), Plaintiff is providing a copy of the
10 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
11 settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
12 submit to the LWDA a copy of the Court’s judgment and order approving the Agreement within ten
13 (10) days after entry of judgment or order. (SCJ Dec., at ¶ 20.)

14 **III. TERMS OF THE PAGA SETTLEMENT**

15 **A. The Gross Settlement Amount**

16 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(s)(2).
17 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment
18 in the amount of Five Hundred and Five Thousand Dollars and Zero Cents (\$505,000.00) to resolve
19 the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA Counsel Fees
20 Payment and PAGA Counsel Litigation Expenses Payment in the amount of up to Two Hundred
21 Thirteen Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$213,333.33),
22 comprised of one-third of the Gross Settlement Amount for the PAGA Counsel Fees Payment
23 (estimated to be approximately \$168,333.33), reimbursement of the PAGA Counsel Litigation
24 Expenses Payment for incurred litigation expenses in an amount not to exceed Forty-Five Thousand
25 Dollars and Zero Cents (\$45,000.00) and Administration Expenses Payment which will not exceed
26 Ten Thousand Five Hundred Dollars and Zero Cents (\$10,500.00). (Agreement generally at §§ 3.2.)

27
28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 After these deductions, the amount remaining is the “PAGA Penalties,” which is estimated to be
2 \$281,166.67. (SCJ Dec., ¶ 21.)

3 Of the PAGA Payment, seventy-five percent (75%) shall be paid to the LWDA and the
4 remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Individual PAGA
5 Payment”). (Agreement at § 3.2.3.) This 75/25 allocation is required by Labor Code § 2699³ as
6 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

7 **B. Allocation of the Individual PAGA Payments**

8 The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved
9 Employees’ 25% share of PAGA Payment (estimated to be \$70,291.67) by the total number of PAGA
10 Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the
11 result by each Aggrieved Employee’s PAGA Pay Periods. (Agreement at § 3.2.3.1.)

12 At the time of the Parties’ settlement of this Action, Defendants estimated that there were
13 approximately 724 Aggrieved Employees who, as of August 6, 2025, worked a total of 46,303 pay
14 periods. (Agreement at § 8.)

15 **C. Funding and Distribution**

16 Provided that an order approving this Settlement is entered by the Court, Defendants shall fund
17 the Gross Settlement Amount within sixty-five (65) days after the Effective Date. (Agreement at §
18 4.2.) Within fifteen (15) days after Defendants fully funds the Gross Settlement Amount, the
19 Administrator will mail all Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved
20 Employees’ last known mailing address. (Agreement at § 4.3.) Settlement checks issued to Aggrieved
21 Employees will expire one hundred eighty (180) days from the date they are issued by the
22 Administrator. (Agreement at § 4.3.1.) If the check remains uncashed by the expiration of the 180-day
23 period, the Administrator shall transmit the funds represented by such checks to the California
24 Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee. (Agreement at §
25 4.3.3.) The Individual PAGA Payments are 100% penalties and shall be reported using IRS Form
26 1099s. (Agreement at § 3.2.3.2.)

27
28

³ All references to Labor Code Section 2698, *et seq* refer to the statute as in effect prior to June 19, 2024.

1 **D. Release of Claims**

2 As of the Funding Date, the State of California and the Aggrieved Employees, including
3 Plaintiff, shall release the Released Parties (as defined in the Agreement) from the Released PAGA
4 Claims which include all PAGA claims alleged in the Second Amended Complaint in the Action and
5 Plaintiff's PAGA Notice, and limited to the specific facts and theories stated in each, which include
6 violations of California Labor Code, sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226,
7 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5,
8 1199, 2802, and 2804, violation of applicable Industrial Welfare Commission Wage Order(s), and
9 pursuant to California Labor Code, section 2699.5, and which occurred during the PAGA Period, and
10 termination, unemployment insurance, disability, social security, workers' compensation, and PAGA
11 claims outside of the PAGA Period. (Agreement at § 1.24.)

12 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

13 Labor Code § 2699(s) requires that the Court “shall review and approve any settlement of any
14 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
15 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco USA,*
16 *Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
17 settlement (§ 2699, subd.(1)(2)), and the Supreme Court has in dictum referred to this review as a
18 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
19 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that any
20 negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that “adoption
21 of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the
22 interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz,*
23 *supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v.*
24 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words,
25 “[i]n review and approval of a proposed settlement under section 2699, subd. (s)(2), a trial court thus
26 must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the
27 state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently,
28 the Parties respectfully ask the Court to review and approve the settlement of the PAGA claims and

the PAGA Payment to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$505,000.00 is fair and reasonable considering the nature and magnitude of the being settled and the various potential impediments to recovery. The various models were informed by PAGA Counsel's investigation, including the analysis of a significant sample of time and payroll data. PAGA Counsel projected Defendants' liability exposure ranged between \$707,460.00 ("Realistic Penalties") and \$3,180,900.00 ("Maximum Penalties") in PAGA penalties. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 71.38% ("Realistic Penalties") and 15.88% ("Maximum Penalties") of Defendants' potential exposure based on Plaintiff's alleged claims. (SCJ Dec., ¶ 22.) Defendants' exposure is detailed below:

Claim	Penalty Amount ⁴	Maximum Penalties	Discount applied	Realistic Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50 ⁵	\$316,750.00	85%	\$47,512.50
<i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	\$76,300.00	90%	\$7,630.00
<i>Unpaid Wages Violations/Regular Rate Violations</i> Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$50	\$446,450.00	85%	\$66,967.50

⁴ California Labor Code section 2699(f)(2) provide the default penalty for PAGA violations of \$100 for initial violations and \$200 for subsequent violations.

⁵ The \$50 penalty rate was used for a number of reasons in this instance. First, Defendants argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Separately, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. See, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest break claims. (SCJ Dec., ¶ 22.).

<i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	\$2,341,400.00	75%	\$585,350.00
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(SCJ Dec., ¶ 22.)

i. Estimated Penalties for Meal Period Violations

Plaintiff alleges that Defendants failed to provide compliant meal periods in violation of Cal. Lab. Code § 512. Specifically, Defendants regularly violated the law by (a) failing to provide meal periods, (b) providing late meal periods, (c) providing short meal periods, and/or (d) requiring employees to work through their meal periods. Plaintiff contends that as a result of Defendant's rigorous workload requirements and practice of understaffing their locations, Plaintiff and Aggrieved Employees were required to work through their meal periods in order to complete various tasks. Further, Plaintiff identified 26.6% meal periods that were recorded at exactly thirty (30) minutes in length, appearing to be synthetic in direct violation of the California Supreme Court's ruling in *Donohue v. AMN Services, LLC* 11 Cal.5th 58 (2021), and raise a rebuttable presumption of meal break violations. (SCJ Dec., ¶ 23.)

Defendants raised a number of defenses to this claim. Defendants argued that they maintained complaint meal period policies and, in practice, provided their employees with the opportunity to take compliant meal periods. Further, meal period premiums were paid throughout the PAGA Period for meal period violations. (SCJ Dec., ¶ 24.)

Consequently, Plaintiff applied an 85% discount to this claim. Plaintiff assigned \$50 per meal break violation and estimated that Defendants' exposure for this claim ranged from \$47,512.50 to approximately \$316,750.00. (SCJ Dec., ¶ 25.)

In assigning \$50 per meal break violation when calculating Defendants' exposure under PAGA, Plaintiff considered a variety of defenses presented by Defendants, all of which resulted in Plaintiff discounting the value of their PAGA claims for purposes of this analysis. Defendants argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commissioner or a court notified the employer that it was in violation of the Labor Code. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-356, citing *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144; see *Amaral v. Cintas Corp. No. 2* (2008) 163

1 Cal.App.4th 1157, 1209 [“Until the employer has been notified that it is violating a Labor Code
2 provision ... the employer cannot be presumed to be aware that its continuing underpayment of
3 employees is a ‘violation’ subject to penalties.”]; SCJ Dec., ¶ 26.) Separately, Defendants argued that
4 courts have considerable discretion to reduce the penalty awards under PAGA. In *Carrington v.*
5 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, the trial court reduced the maximum PAGA penalty
6 amount by 90%. The Court of Appeal affirmed a judgment after trial which only provided for a PAGA
7 penalty of \$5 per pay period. (SCJ Dec., ¶ 27.) In *Magadia v. Wal-Mart Associates, Inc.* (2019) 384
8 F.Supp.3d 1058, a federal court reduced PAGA penalties by 66.4%. In *Fleming v. Covidien*, 2011 U.S.
9 Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to
10 \$500,000, a reduction of 82.2% because the court found maximum penalties “unjust” because the
11 employees had suffered no injuries. Some trial courts have even awarded no civil penalties, even when
12 Labor Code violations are established. (See *In re Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
13 589 (affirming an award of \$0 in PAGA penalties in a wage and hour class action); *In re Taco Bell*
14 *Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
15 penalties denied after trial).) Accordingly, it is unlikely that Plaintiff would recover full penalty
16 amounts even if they prevailed in establishing the underlying Labor Code violations. Plaintiff is not
17 aware of any Court in California that has awarded the full \$100 per pay period rate, let alone the
18 subsequent rate of \$200 per pay period. (SCJ Dec., ¶ 28.)

19 ii. Estimated Penalties for Unreimbursed Business Expenses

20 Plaintiff alleges that Defendants failed to adequately reimburse Plaintiff and Aggrieved
21 Employees for the use of their personal vehicles in direct consequence and discharge of their work
22 duties. Specifically, Plaintiff and Aggrieved Employees were required to use their personal vehicles
23 to run work-related errands, such as dropping off documents at the post office. However, Defendants
24 failed to reimburse Plaintiff and Aggrieved Employees for the costs associated with the use of their
25 personal vehicles. Defendants argued that they provided company vehicles and those who used their
26 personal vehicles did so voluntarily and maintained the majority of Aggrieved Employees used
27 company vehicles. (SCJ Dec., ¶ 29.)

28 Accordingly, Plaintiff applied a 90% discount to this claim and assigned \$100 per violation

1 pursuant to Cal. Lab. Code § 2699(f). Plaintiff estimated that Defendants' exposure for this claim
2 ranged from \$7,630.00 to approximately \$76,300.00. (SCJ Dec., ¶ 30.)

3 iii. Estimated Liability for Unpaid Wages

4 Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and Aggrieved
5 Employees, based on several theories of liability. Defendants failed to pay Aggrieved Employees for
6 all hours worked, failed to pay Aggrieved Employees at the correct regular rate of pay for meal period
7 premiums, overtime and sick pay, and failed to pay all meal premiums owed. As a result, Plaintiff and
8 Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent
9 working under Defendants' control. A central dispute was Defendant's time-conversion practice.
10 Plaintiff contended that converting time at the pay-period level resulted in underpayment of wages,
11 while Defendants maintained that no underpayment occurred when time was converted on a daily
12 basis. (SCJ Dec., ¶ 31.)

13 Defendants vigorously denied liability for this claim. Defendant contended that the incentive
14 compensation at issue was properly classified and compensated in compliance with applicable law and
15 that any overtime associated with such compensation was appropriately reconciled through
16 Defendant's payroll practices. Defendants also disputed Plaintiff's time-conversion theory and argued
17 that Plaintiff's calculation overstated any alleged underpayment. To the extent Plaintiff alleged
18 underpayment of meal period premiums resulting from regular rate calculations, Defendants argued
19 that any such underpayment is de minimis and did not support the scope of liability alleged. In
20 addition, any alleged regular rate of pay ("RROP") violations impacted only a small percentage of
21 PAGA pay periods, substantially limiting any potential exposure. (SCJ Dec., ¶ 32.)

22 Accordingly, Plaintiff applied an 85% discount to this claim and assigned \$50 per violation
23 due to the reasons stated above. The discount accounted for the litigation risk created by the competing
24 time-conversion methodologies, as well as Defendants' limited-exposure arguments. Plaintiff
25 estimated that Defendants' exposure for this claim ranged from \$66,967.50 to approximately
26 \$446,450.00. (SCJ Dec., ¶ 33.)

27 iv. Estimated Liability for Derivative Wage Statement Penalties

28 Plaintiff further alleges that Defendants provided facially non-compliant wage statements in

1 violation of Labor Code 226(a). Specifically, Plaintiff alleges that Defendants expressly violated
2 Labor Code section 226(a) because they failed to pay Aggrieved Employees for all hours worked,
3 failed to pay Aggrieved Employees at the correct regular rate of pay for meal period premiums,
4 overtime and sick pay, and failed to pay all meal premiums owed. (SCJ Dec., ¶ 34.)

5 Defendants argue that even if they failed to furnish accurate wage statements, Plaintiffs cannot
6 establish that their failure was knowing and intentional or that such failure resulted in actual harm to
7 the Aggrieved Employees. Further, Defendants argue that this claim is derivative of the other claims
8 asserted by Plaintiff, and that any such penalties associated with this claim would constitute improper
9 “stacking.” (SCJ Dec., ¶ 35.)

10 Accordingly, Plaintiff applied a 75% discount to this claim and assigned \$100 per violation.
11 Plaintiff estimated that Defendants’ exposure for this claim ranged from \$3,240,000 to approximately
12 \$4,050,000. (SCJ Dec., ¶ 36.)

13 **B. The Gross Settlement Compares Favorably To The Likely Recovery**

14 In light of the above, the Gross Settlement Amount is between approximately 71.38%
15 (“Realistic Penalties”) and 15.88% (“Maximum Penalties”) of Defendants’ potential PAGA exposure.
16 The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through
17 continued litigation. (SCJ Dec., ¶ 37.)

18 Defendants’ maximum exposure to PAGA penalties is not a realistic outcome of the litigation
19 because it fails to account for the risks of continued litigation including, but not limited to, Defendants’
20 defenses. Here, Defendants argue that they can only be assessed civil penalties for actual violations of
21 the Labor Code. See Cal. Lab. Code § 2699, subd. (f)(2). In other words, to recover any civil penalties,
22 Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane*
23 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language
24 [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
25 suffered a violation of the Labor Code by the defendant.”].) To do this, Plaintiff would need to prove
26 each Aggrieved Employee was subject to the alleged Labor Code violation. Thus, Defendants contend
27 that Plaintiff would be required to “prove Labor Code violations with respect to each and every
28 individual on whose behalf plaintiff seeks to recover civil penalties under PAGA.” (*Hibbs-Rines v.*

1 *Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009); SCJ Decl., ¶ 38.)

2 Lastly, the maximum penalty figure does not consider that Courts have complete discretion to
3 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the
4 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699, subd. (e)(2).) In fact, courts
6 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. (See e.g. *Carrington v.*
7 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
8 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly
9 took the circumstances proffered by Starbucks into consideration when it imposed the penalty ... only
10 \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778, 788 (2018),
11 review granted on other grounds (noting that the trial court “exercised its discretion to reduce the
12 [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were
13 deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047,
14 *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties
15 for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no
16 injuries as a result of the erroneous wage statements and made no complaints about the errors or
17 omissions in the wage statements, thus reducing the maximum penalty by 82%); see also, *Gola v.*
18 *University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed
19 Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex
20 (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was
21 the appropriate penalty).) The gross amount obtained by PAGA Counsel is reasonable in light of
22 Defendants’ arguments. (SCJ Decl., ¶ 39.)

23 Given Defendants’ defenses to the claimed Labor Code violations at issue, and the risks and
24 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
25 is fair and reasonable. This Settlement was negotiated by experienced counsel at arm’s length. The
26 LWDA has been provided notice of this motion and the PAGA Settlement, and the decision of LWDA
27 to accept the PAGA Settlement and not oppose the motion should be given considerable weight.
28 Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights.

1 (SCJ Dec., ¶ 40.)

2 **C. The Remaining Settlement Terms Are Fair and Reasonable**

3 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
4 2699(s) does not require that a court approve any other elements of the proposed settlement. Because
5 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
6 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
7 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
8 herein, the settlement terms for attorneys' fees and costs are reasonable. (SCJ Dec., ¶ 41.)

9 **V. PLAINTIFF'S COUNSEL FEES AND EXPENSES PAYMENT ARE FAIR AND**
10 **REASONABLE**

11 Plaintiff's Counsel seeks approval of the PAGA Counsel's Fees Payment and PAGA Counsel
12 Litigation Expenses Payment, comprised of PAGA Counsel's Fees Payment in the amount of one-
13 third of the Gross Settlement Amount, calculated to be \$168,333.33, and reimbursement of PAGA
14 Counsel's Litigation Expenses of \$31,188.31. PAGA does not have any requirements for reviewing
15 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
16 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
17 review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage
18 and hour counsel. (SCJ Dec., ¶ 42)

19 **A. The Requested Attorneys' Fees and Costs are Fair and Reasonable**

20 The requested PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment
21 comprised of \$168,333.33 for attorneys' fees and reimbursement of actually incurred litigation
22 expenses of \$31,188.31, is fair, reasonable, and justified by the result achieved. (Agreement at § 3.2.1;
23 SCJ Dec., ¶ 43.) Plaintiff's Counsel negotiated a recovery of Five Hundred Five Thousand Dollars
24 and Zero Cents (\$505,000.00), and this result justifies the requested fees equal to one-third of this
25 recovery. This percentage is within the standard contingent recovery percentage of one-third, and this
26 percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*,
27 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain.
28 Defendants' defenses to the merits of the case created difficulties with proof and complex legal issues

1 for Plaintiff's Counsel to overcome. Here, several defenses asserted by Defendants present serious
2 threats to the claims of Plaintiff and the Aggrieved Employees. Defendants asserted that its
3 employment practices complied with all applicable labor laws. If successful, Defendants' factual and
4 legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes
5 that these defenses could be overcome, Defendants maintain that these defenses have merit and
6 therefore present a serious risk to recovery. The Settlement was possible because, in Plaintiff's
7 Counsels' eyes, Plaintiff's Counsel was able to persuade Defendants that there was an appreciable risk
8 that Plaintiff would prevail on the factual and legal issues underlying liability and overcome
9 difficulties in proof as to monetary relief. (SCJ Dec., ¶ 44.)

10 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
11 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting
12 the contingent risks of the litigation or obtaining good results. (See, e.g., *Laffitte*, 1 Cal. 5th at 506
13 [approving one-third fee award with multiplier between 2.03 and 2.13]; *Pellegrino v. Robert Half*
14 *Intern., Inc.*, 182 Cal.App.4th 278 (2010) [noting reasonable multipliers of 2.0 to 4.0 are often applied
15 and affirming 1.75 multiplier]; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
16 [noting that multipliers can range from 2 to 4 or higher]; *Vandervort v. Balboa Capital Corp.*, 8
17 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) [awarding one-third of fund, which was a 2.52 multiplier of
18 lodestar]; *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) [awarding one-third
19 of fund, which was a 2.58 multiplier of lodestar]; *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-
20 LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) [approving fee award that represented a
21 multiplier of 2.76 as falling within the "majority" range for risk multipliers].)

22 As detailed in Plaintiff's Counsels' time and billing records submitted herewith, Plaintiff's
23 Counsels' current combined loadstar is \$177,550.00. (SCJ Dec., ¶ 45; Declaration of Jean-Claude
24 Lapuyade ("JCL Dec.") at ¶¶ 12-14, Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-7.) Thus,
25 Plaintiff's Counsels' fee request is equal to Plaintiff's Counsel's loadstar with a **negative** multiplier of
26 0.95 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier
27 range between 2 and 4. (See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D.
28 Cal. 2016) [following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26];

1 *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017)
2 [following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7]; SCJ Dec., ¶
3 46.)

4 **B. Plaintiff's Counsel is Entitled to Reimbursement of Actual and Reasonably**
5 **Incurred Litigation Expenses.**

6 Attorneys who create a common fund for the benefit of a class are entitled to payment from the
7 fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
8 counsel's incurred expenses because those who benefit from their effort should share in the cost. *See*
9 *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
10 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
11 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
12 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
13 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
14 filing fees, mediation fees and investigation fees). Prior to incurring costs for filing this motion,
15 Plaintiff's Counsel collectively expended \$31,188.31 prosecuting this action (JCL Law Firm, APC -
16 \$16,290.72, and Zakay Law Group, APLC - \$14,897.59). (SCJ Dec. ¶ 47; JCL Dec. ¶ 15; Zakay Dec.
17 ¶ 8.) Plaintiff's Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
18 clients including the following: filing fees; copying; postage; factual and legal research charges; and
19 mediation fees; which were all incurred during, and were necessary for the successful prosecution of,
20 the litigation and, therefore, should be reimbursed. (SCJ Dec. ¶ 48.)

21 **VI. CONCLUSION**

22 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement
23 as set forth in the PAGA Settlement Agreement and enter the proposed order and judgment submitted
24 herewith.

25 Dated: September 9, 2026

JCL LAW FIRM, APC

26 By: Sydney Castillo-Johnson

27 Sydney Castillo-Johnson, Esq.
28 Attorney for PLAINTIFF