

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com

Attorneys for PLAINTIFF PERSEUS PORRAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

PERSEUS PORRAS, an individual, on behalf of
the state of California, as a private attorneys
general,

Plaintiff,

v.

TECHNET PARTNERS, INC., a California
corporation; and DOES 1-50, Inclusive;

Defendants.

Case No. 23STCV01710

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

Date: October 3, 2024

Time: 10:30 a.m.

Judge: Hon. William F. Highberger
Dept: 10

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
	A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA and Civil Action Against Defendant	2
III.	TERMS OF THE PAGA SETTLEMENT	4
	A. The Gross Settlement Amount	4
	B. Allocation of Aggrieved Employee Payments	5
	C. Funding and Distribution	5
	D. Release of Claims	6
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	6
	A. The Gross Settlement Amount is Fair and Reasonable	7
	i. Estimated Penalties for Defendant's Inaccurate Wages Statements	8
	ii. Estimated Liability for Unpaid Wages	8
	iii. Estimated Penalties for Meal Period Violations	9
	iv. Estimated Penalties for Rest Period Violations	9
	v. Estimated Liability for Unreimbursed Business Expenses	11
	B. The Gross Settlement Compares Favorable To The Likely Recovery	11

1 C. The Remaining Settlement Terms Are Fair and Reasonable14

2

3 V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE14

4

5 A. The Requested Attorneys’ Fee is Fair and Reasonable15

6

7 B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation

8 Costs16

9 VI. PLAINTIFF’S SERVICE AWARD IS FAIR AND REASONABLE17

10

11 VII. CONCLUSION18

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

///

TABLE OF AUTHORITIES

CASES

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157, 1209	7
<i>Bernstein v. Virgin America, Inc.</i> (2021) 3 F.4th 1127, 1144	7
<i>Boyd v. Bank of America</i> , 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	13
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	10
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	7, 11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1800-1801.....	6
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i> , 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	14
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047, *4 (C.D. Cal. 2011)	11
<i>Gola v. University of San Francisco</i> , San Francisco Superior Court Case No. CGC-18-5655018.....	11
<i>Harris v. Marhoefer</i> , 24 F.3d 16, 19 (9th Cir. 1994).....	14
<i>Hartless</i> , 273 F.R.D. at 645-46	14
<i>Hibbs-Rines v. Seagate Technologies</i> , 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	10
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	13
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348, 381 (2014).....	1
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> , 29 Cal App 5th 778, 788 (2018).....	11
<i>Kim v. Reins International California, Inc.</i> (2020) 9 Cal.5th 73, 88;.....	6
<i>Laffitte v. Robert Half Int’l Inc.</i> , 1 Cal.5th 480, 504, 506 (2016).....	13-14
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 77, 88.....	6
<i>N.A. v. Superior Court</i> , 8 Cal. 5th 175, 182 (2019).....	1, 3-4
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal. 5th 93.....	11
<i>Ordonez v. Radio Shack, Inc.</i> (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	9
<i>Pellegrino v. Robert Half Intern., Inc.</i> , 182 Cal.App.4th 278 (2010).....	13
<i>Rider v. City of San Diego</i> , 11 Cal. App. 4th 1410, 1423 n.6 (1992).....	14

///

1	<i>Taylor v. FedEx Freight, Inc.</i> , 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	14
2	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	13
3	<i>Villa v. United Site Servs. of California, Inc.</i> (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8	9
4	<i>Wesson v. Staples the Off. Superstore</i> , 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	10
5	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224, 254 (2001)	13
6	<i>Williams v. Superior Court</i> (2017) 3 Cal.5th 531, 549.....	6
7	<i>Zayerz v. Kiewit Infrastructure West</i> , 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	10
8		
9		

RULES, CODES, AND STATUTES

10	Violation of Cal. Bus. & Prof Code §§ 17200 et seq.....	2
11	<i>Cal. Lab. Code</i> § 201.....	2, 6-7
12	<i>Cal. Lab. Code</i> § 202.....	2, 6-7
13	<i>Cal. Lab. Code</i> § 203.....	2, 6-7, 9
14	<i>Cal. Lab. Code</i> § 204.....	7
15	<i>Cal. Lab. Code</i> § 226.....	2, 6-7, 10-11
16	<i>Cal. Lab. Code</i> § 226.2.....	7
17	<i>Cal. Lab. Code</i> § 226.37.....	2
18	<i>Cal. Lab. Code</i> § 226.7.....	2, 5, 7
19	<i>Cal. Lab. Code</i> § 246.....	7
20	<i>Cal. Lab. Code</i> § 382.....	12
21	<i>Cal. Lab. Code</i> § 558 et seq.....	7
22	<i>Cal. Lab. Code</i> § 510.....	2, 5
23	<i>Cal. Lab. Code</i> § 512.....	2, 5, 7
24	<i>Cal. Lab. Code</i> § 1194.....	2, 5, 7
25	<i>Cal. Lab. Code</i> § 1197.....	2, 5, 7
26	<i>Cal. Lab. Code</i> § 1197.1.....	2, 5, 7
27	<i>Cal. Lab. Code</i> § 1198.....	7
28	<i>Cal. Lab. Code</i> § 2699 et seq	1-4, 6, 10-12
	<i>Cal. Lab. Code</i> § 2802.....	2, 6

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Perseus Porras (“Plaintiff”) seeks approval of the PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 161 “Aggrieved Employees,” defined as all current and former non-exempt employees who worked for Technet Partners, Inc. (“Defendant”) in California during the period from January 25, 2022 to May 31, 2024. (“PAGA Period”). Agreement at §§ 1.4; 1.20; 4.1. This is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiff himself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency (“LWDA”) will share the PAGA Penalties of Seventy Thousand Dollars and Zero Cents (\$70,000.00). The PAGA Penalties shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees (“Aggrieved Employee Payment”). § Agreement at 3.2.3.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 9.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant

On January 25, 2023, Plaintiff Porras filed a class action complaint against Defendants in the Superior Court for Los Angeles, Case Number 23STCV01710 (the “*Porras Action*” or the

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 “Action”). The complaint alleged eight causes of action for (1) Unfair Competition in Violation of
2 Cal. Bus. & Prof Code §§ 17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal.
3 Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal.
4 Labor Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§
5 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§
6 226.37 and 512; (6) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201-203;
7 (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226;
8 and (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Labor Code §
9 2802. JCL Dec., ¶ 10.

10 Also on January 25, 2023, Plaintiff, on behalf of himself and on behalf of other Aggrieved
11 Employees, served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”) and
12 draft complaint memorializing claims against Defendant for alleged violations of the California
13 Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure
14 to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and
15 overtime wages; failure to provide accurate itemized wage statements; and failure to timely pay
16 wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-931657-
17 23). JCL Dec., ¶ 11.

18 The 65-day “waiting period” on Plaintiff’s right to file a civil action under PAGA, *see* Cal.
19 Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to
20 investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any
21 intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 12.

22 On July 18, 2023, Plaintiff filed a First Amended Complaint in the *Porras* Action to add a
23 ninth cause of action for civil penalties under the Private Attorney Generals Act (“PAGA”). JCL
24 Dec., at ¶ 13.

25 On April 10, 2024, the Parties participated in an all-day mediation presided over by Hon.
26 Brian C. Walsh (Ret.), an experienced judge and mediator of wage and hour representative actions.
27 In advance of the with the mediation, Defendant provided Plaintiff with sufficient information to
28 properly evaluate Defendant’s potential liability exposure. Among the data and documents

1 Defendant produced included, but was not limited to, the total number of Aggrieved Employees, pay
2 periods, employee handbooks, and dozens of documents of time and payroll data. JCL Dec., ¶ 14.

3 Defendant has produced an arbitration agreement which purportedly bars Plaintiff's class
4 action claims. Accordingly, in conjunction with this Motion, Plaintiff has filed a request for
5 dismissal of the class claims. The settlement reached between the Parties does not release any class
6 claims. JCL Dec., at ¶ 15.

7 The Parties' mediation resulted in a settlement of Plaintiff's PAGA claims and was
8 memorialized in the form of a Memorandum of Understanding ("MOU"). After reaching an
9 agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the
10 subject of the instant motion. The Settlement was negotiated in light of all known facts and
11 circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being
12 able to maintain representative claims and establishing manageability, the difficulty of proving
13 Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the
14 significant delay and potential appellate issues inherent to litigation – and was reached after
15 extensive arm's length negotiations, with the assistance of Judge Walsh. JCL Dec., at ¶ 16.

16 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
17 by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of
18 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
19 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
20 PAGA claim.² Nor does this Settlement waive Defendant's right to assert *res judicata* or other
21 available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 17.

22 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
23 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
24 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
25 Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the
26 Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 18.

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 **III. TERMS OF THE PAGA SETTLEMENT**

2 **A. The Gross Settlement Amount**

3 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
4 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
5 payment in the amount of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to
6 resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA
7 Counsel Award in the amount Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00),
8 comprised of one-third of the Gross Settlement Amount (estimated to be approximately \$50,000.00),
9 reimbursement of incurred litigation expenses in an amount not to exceed Twenty-Five Thousand
10 Dollars and Zero Cents (\$25,000.00), and Claims Administration Costs which will not exceed Five
11 Thousand Dollars and Zero Cents (\$5,000.00). Agreement generally at §§ 3.1; 3.2.1; 3.2.2. After
12 these deductions, the amount remaining is the “PAGA Penalties,” which is estimated to be \$70,000.
13 JCL Dec., ¶ 19.

14 The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the
15 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
16 Payment, and the Administrator’s Expenses Payment. Agreement at § 1.10.

17 Of the PAGA Penalties Payment, seventy-five percent (75%) shall be paid to the LWDA and
18 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Aggrieved
19 Employee Payment”). Agreement at §§ 1.23, 3.2.3. This 75/25 allocation is required by Labor Code
20 § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

21 **B. Allocation of Aggrieved Employee Payment**

22 The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved
23 Employees’ 25% share of PAGA Penalties (\$17,500.00) by the total number of PAGA Pay Periods
24 worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by
25 each Aggrieved Employee’s PAGA Pay Periods. Agreement at § 3.2.3.1 The PAGA Period is the
26 period between January 25, 2022 to May 31, 2024. Agreement at § 1.20.

27 At the time of the parties’ settlement of this Action, Defendant estimated that there were
28 approximately 161 Aggrieved Employees who worked approximately 7,923 pay periods during the

1 PAGA Period based on company records. Agreement at § 4.1.³

2 **C. Funding and Distribution**

3 Provided that an order approving this Settlement is entered by the Court, Defendant shall
4 fund the Gross Settlement Amount within 10 months of April 10, 2024 date or 60 days after court
5 approval of the PAGA settlement, whichever is later. Agreement at § 1.10. Within thirty (30) days
6 after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the
7 Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last known
8 mailing address. Agreement at § 4.4. Settlement checks issued to Aggrieved Employees will expire
9 one hundred eighty (180) days from the date they are issued by the Settlement Administrator.
10 Agreement at § 4.4.1. If the check remains uncashed by the expiration of the 180-day period, the
11 Settlement Administrator shall transmit the funds represented by such checks to the California
12 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at §
13 4.4.3. The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form
14 1099s. Agreement at § 3.2.3.2.

15 **D. Release of Claims**

16 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
17 California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in
18 the Agreement) from the Released PAGA Claims which include all claims for PAGA penalties that
19 were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
20 Operative Complaint and PAGA Notices, including claims for: failure to pay minimum wages in
21 violation of California Labor Code sections 1194, 1197 and 1197.1; failure to pay overtime wages in
22 violation of California Labor Code sections 510 et seq; failure to provide required meal periods in
23 violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
24 failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512
25 and the applicable IWC wage order; failure to provide wages when due in violation of California
26

27 ³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
28 10% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for the
number of Pay Periods over 110% of 7,923. For example, if the total Pay Periods in the PAGA Period are 115% of
7,923, the Gross Settlement Amount shall increase by 5%. Agreement at § 8.

1 Labor Code sections 201, 202 and 203; failure to provide accurate itemized wage statements in
2 violation of California Labor Code section 226; and failure to reimburse employees for required
3 business expenses in violation of California Labor Code section 2802. The release of claims for
4 PAGA penalties shall bind the Aggrieved Employees, the LWDA, and the State of California.
5 Agreement at § 5.2

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

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

25 **A. The Gross Settlement Amount is Fair and Reasonable**

26 The Gross Settlement Amount of \$150,000.00 is fair and reasonable and, therefore, should be
27 approved. Here, *without stacking* the PAGA penalties, Defendant’s liability exposure is estimated at
28 approximately \$510,150.00 in PAGA Penalties. JCL Dec., ¶ 22. Assuming the Court permitted

Plaintiff to stack PAGA penalties, Plaintiff's third-party damages consultant estimated Defendant's liability exposure at approximately \$916,300.00. Plaintiff's consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount ⁴	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	\$50 ⁵	1,140	14% of PAGA Pay Periods	\$57,000
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	\$50	1,140	14% of PAGA Pay Periods	\$57,000
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$100	3,962	50% of PAGA Pay Periods	\$396,150
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	\$100	3,962	50% of PAGA Pay Periods	\$396,150
Waiting Time Penalties Cal. Labor Code § 203	\$100	100	1% of PAGA Pay Periods	\$10,000

⁴ In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that “[u]ntil 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.” Therefore, Plaintiff used only penalties for initial violations.

⁵ The \$50 penalty rate was used for a number of reasons in this instance. First, Defendant 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, Defendant 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. JCL Dec., ¶ 28.

1 JCL Dec., ¶ 21.

2 **i. Estimated Liability for Unpaid Wages**

3 Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and the Aggrieved
4 Employees under two separate theories. First, Plaintiff alleges he and other Aggrieved Employees
5 worked off-the-clock pre-shift to attend meetings at Defendant's Carlsbad office and worked off the
6 clock post-shift to prepare reports. Second, Plaintiff alleges that Defendant failed to include certain
7 non-discretionary bonuses and commissions when calculating the regular rate of pay when paying
8 overtime wages. Specifically, Plaintiff alleges Defendant paid Aggrieved Employees non-
9 discretionary incentive compensation labeled as "ebon", which was not properly calculated into the
10 regular rate of pay for purposes of overtime. As a result of these miscalculations, Plaintiff and other
11 Aggrieved Employees were underpaid their overtime wages during pay periods in which they
12 received non-discretionary incentive compensation and received overtime wages. JCL Dec., ¶ 22.
13 Defendant denies any practice of failing to pay employees for work performed off-the-clock and
14 further noted that its Carlsbad meetings occurred just a handful of times each year. To the extent
15 any employee was not recording his or her time spent preparing reports, Defendant contends that
16 they were not instructed to do so, nor was Defendant aware that any work was being performed off-
17 the-clock. As to its regular rate calculation, Defendant argued that its calculation of bare rate + .5x
18 equation complies with California law. Taking into account Defendant's defenses, Plaintiff
19 estimates Defendant's exposure for this claim to be approximately \$396,150.00. JCL Dec., ¶ 23.

20 **ii. Estimated Penalties for Meal Period Violations**

21 Plaintiff also alleges that Defendant failed to provide compliant meal periods pursuant to two
22 separate theories. First, Plaintiff's expert found that recorded meal periods were late, short, or
23 missed during approximately 15% of pay periods. Accordingly, Plaintiff alleges that he and other
24 Aggrieved Employees are owed meal period premiums for meal period violations that occurred
25 during the PAGA Period. Second, Plaintiff alleges that other meal periods that appear compliant on
26 paper are synthetic, contending that employees were directed by Defendant to clock out before the
27 sixth hour of work, even if they were unable to take a meal period at that point in their shift. JCL
28 Dec., ¶ 24. Defendant denies these allegations, noting that it paid meal period premiums, and its

1 policy and practice of paying meal period premiums is incongruous with a contention that it
2 fabricated compliant meal periods. Taking into account Defendant's defenses, Plaintiff estimates
3 Defendant's exposure for this claim to be approximately \$57,000.00. JCL Dec., ¶ 25.

4 **iii. Estimated Penalties for Rest Period Violations**

5 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
6 Plaintiff alleges that he and the Aggrieved Employees were instructed to combine their rest breaks
7 with their meal period. This resulted in a single, combined break, rather than allowing employees
8 to rest during long stretches of their shift before and after their meal period. Defendant denied
9 these allegations, arguing that to the extent any employee combined a rest break with their meal
10 period, this was done at the employee's sole discretion, and further, that Defendants maintain
11 legally compliant rest period policies. Defendant also argued that Plaintiff's rest break claim
12 would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim.
13 Establishing liability likely would have entailed competing testimony stating either rest breaks
14 were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D.
15 Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the
16 Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is
17 insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of*
18 *California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own
19 evidence confirms that the written policy does not generate uniform practices"). JCL Dec., ¶ 29.
20 Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim
21 to be approximately \$57,000.00. JCL Dec., ¶ 26.

22 **iv. Estimated Penalties for Derivative Penalties**

23 Plaintiffs further alleged that the Defendant's labor code violations for non-compliant meal
24 and rest breaks and unpaid wages results in derivative liability for waiting time penalties and
25 penalties resulting from inaccurate wage statements. Although these penalties represented
26 Defendant's largest dollar amount of exposure, these are Plaintiffs' most uncertain claim.
27 Specifically, Defendants argued that Plaintiffs could not prove the "willful" prong needed to obtain
28 waiting time penalties under Labor Code Section 203 or the "knowing or intentional" prong

1 needed to obtain waiting time penalties under Labor Code Section 226. Defendant further argued -
2 that it substantially complied with its obligation to provide the correct total of hours worked.
3 Taking into account Defendant's defenses, Plaintiffs estimated Defendant's exposure for these
4 claims to be \$10,000 for waiting time penalties pursuant to Labor Code Section 203 and \$3,962 for
5 penalties under Labor Code 226. JCL Dec., ¶ 41.

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

7 In light of the above, the Gross Settlement Amount is approximately 20.03% of Defendant's
8 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
9 of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties
10 is not a realistic outcome of the litigation because it fails to account for the risks of continued
11 litigation including, but not limited to, Defendant's defenses. *See, Zayerz v. Kiewit Infrastructure*
12 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant
13 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See Lab.*
14 *Code § 2699(f)(2)*. In other words, to recover any civil penalties, Plaintiff would be required to
15 prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
16 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff
17 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
18 Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved
19 Employee was subject to the alleged Labor Code violation, which would be difficult to do, since
20 Defendant deny any liability or wrongdoing of any kind associated with the claims alleged in this
21 action. JCL Dec., ¶ 28.

22 Thus, Defendant contended that Plaintiff would be required to "prove Labor Code violations
23 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
24 under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
25 2009). When "determining whether the employer committed Labor Code violations with respect to
26 each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
27 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 29.

28 Finally, the maximum penalty figure does not consider that Courts have complete discretion

1 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
2 the facts and circumstances of the particular case, to do otherwise would result in an award that is
3 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
4 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
5 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
6 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
7 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
8 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
9 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
10 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
11 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
12 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
13 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
14 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
15 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
16 *see also, Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), as modified (May 9,
17 2023), *reh’g denied* (May 15, 2023), *review denied* (July 12, 2023), and *disapproved of by Naranjo*
18 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown
19 bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The
20 gross amount obtained by PAGA Counsel is reasonable in light of Defendant’s arguments. JCL
21 Dec., ¶ 37.

22 Given Defendant’s defenses to the claimed Labor Code violations at issue, the risks and costs
23 of continued litigation, and Defendant’s financial condition, Plaintiff and PAGA Counsel believe
24 that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by
25 experienced counsel at arm's length. JCL Dec., ¶ 31. The LWDA has been provided with notice of
26 this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement
27 and not oppose the motion should be given considerable weight. Moreover, the LWDA is a
28 sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 5, 32.

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

2 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
3 2699(1) does not require that a court approve any other elements of the proposed settlement.
4 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
5 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
6 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
7 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
8 JCL Dec., ¶ 33.

9 **D. Plaintiff's Settlement of His Tort Claims Alleged Against Defendant**

10 On March 11, 2024, Plaintiff filed a claim against Defendant with the California Civil Rights
11 Department (CRD Matter Number 202403-23930512) and obtained an immediate Right to Sue
12 notice. Separate from the PAGA settlement, Plaintiff entered into an individual settlement with
13 Defendant in which he granted Defendant a broad release of all claims, including the tort claims
14 outlined in his CRD claim. Plaintiff will file this settlement agreement under seal for the Court to
15 review in camera, at the Court's request. JCL Dec., ¶ 34.

16 **V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE**

17 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
18 the amount of \$50,000.00 (one-third of the Gross Settlement Amount) and reimbursement of
19 litigation costs not to exceed \$25,000.⁶ PAGA does not have any requirements for reviewing
20 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
21 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
22 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
23 and hour counsel. JCL Dec., ¶ 35.

24 **A. The Requested Attorneys' Fee is Fair and Reasonable**

25 The requested PAGA Counsel Award of \$75,000.00, comprised of \$50,000.00 for attorneys'
26 fees and reimbursement of litigation expenses of up to \$25,000 is fair, reasonable, and justified by
27

28 ⁶ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$13,881.63 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 the result achieved. Agreement at § 3.2.1; JCL Dec., ¶ 36. PAGA Counsel negotiated a recovery of
2 One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), and this result justifies the
3 requested fees equal to one third of this recovery. This percentage is within the standard contingent
4 recovery percentage of one-third, and this percentage is what was expressly approved by the
5 Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case
6 was brought, the result was far from certain. Defendant's defenses to the merits of the case created
7 difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several
8 defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved
9 Employees. Defendant asserted that its employment practices complied with all applicable labor
10 laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the
11 Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant
12 maintains that these defenses have merit and therefore present a serious risk to recovery. The
13 Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade
14 Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal
15 issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 37.

16 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
17 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
18 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
19 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
20 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
21 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
22 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
23 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
24 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
25 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
26 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
27 a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

1 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
2 Counsels' current combined loadstar is \$72,264.00. JCL Dec., ¶¶ 6, 38-49; Declaration of Shani
3 Zakay ("Zakay Dec.") at ¶¶ 2-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's
4 loadstar with a *negative* multiplier of 0.69 – well below the 2.13 multiplier approved in *Laffitte* –
5 and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight,*
6 *Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award
7 with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*,
8 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with
9 cross-check lodestar multiplier of 1.7).

10 **B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably**
11 **Incurred Litigation Costs.**

12 Attorneys who create a common fund for the benefit of a class are entitled to payment from
13 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
14 counsel's incurred expenses because those who benefit from their effort should share in the cost.
15 See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
16 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
17 paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also
18 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded
19 litigation costs for consultants, online legal research, copying, postage, long distance charges, travel
20 expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this
21 motion, PAGA Counsel collectively expended \$13,881.63 prosecuting this action (JCL Law Firm,
22 APC - \$7,612.83, Zakay Law Group, APLC - \$6,268.80). JCL Dec. ¶¶ 7, 48; Zakay Dec. ¶ 6.
23 PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
24 clients including the following: filing fees; copying; postage; factual and legal research charges;
25 mediation fees; and expert costs which were all incurred during, and were necessary for the
26 successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 49.

27 ///

28 ///

1 **VI. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
3 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
4 submitted herewith.

5
6 Dated: August 30, 2024

JCL LAW FIRM, APC

7
8 By: 
9 Jean-Claude Lapuyade, Esq.
10 Attorney for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28