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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SHAWNETTE SNOWDEN, an individual, in her
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

PALMDALE 794 INC. dba IHOP 794, a
California corporation; and DOES 1-50,
Inclusive;

Defendants.

Case No. 23STCV02326

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

Date: January 21, 2025
Time: 8:30 a.m.
Reservation ID: 409184166849

Judge: Hon. Joseph Lipner
Dept: 72

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	4
C.	Funding and Distribution	5
D.	Release of Claims	5
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	6
A.	The Gross Settlement Amount is Fair and Reasonable	7
i.	Estimated Liability for Unpaid Wages	7
ii.	Estimated Penalties for Meal and Rest Period Violations	8
iii.	Estimated Liability for Defendant's Violation of Labor Code § 2802	9
iv.	Estimated Penalties for Derivative Violations	10
B.	The Gross Settlement Compares Favorably To The Likely Recovery	10

///

1	C. The Remaining Settlement Terms Are Fair and Reasonable	13
2	V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE	13
3	A. The Requested Attorneys' Fee is Fair and Reasonable	14
4	B. PAGA Counsel are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.	15
5	VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE	16
6	VII. CONCLUSION	17

///

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.	
(2000) 85 Cal.App.4th 1135, 1150.....	12
Bell v. Farmers Ins. Exch.,	
115 Cal.App.4th 715, 726 (2004).....	16
Boyd v. Bank of America,	
2014 WL 6473804, at *11 (C.D. Cal. 2014).....	14-15
Carrington v. Starbucks Corp.	
(2018) 30 Cal.App.5th 504	11
Clark v. American Residential Services, LLC,	
175 Cal. App. 4th 785, 804-805 (2009).....	16
Dunk v. Ford Motor Co.	
(1996) 48 Cal.App.4th 1794, 1800-1801.....	6
Emmons v. Quest Diagnostics Clinical Labs., Inc.,	
2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	15
Fleming v. Covidien, Inc.,	
2011 WL 7563047, *4 (C.D. Cal. 2011)	11
Gola v. University of San Francisco,	
San Francisco Superior Court Case No. CGC-18-5655018.....	11
Harris v. Marhoefer,	
24 F.3d 16, 19 (9th Cir. 1994).....	15
Hartless,	
273 F.R.D. at 645-46	15
Hopkins v. Stryker Sales Corp.,	
No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	15
Iskanian v. CLS Transportation,	
59 Cal. 4th 348, 381 (2014).....	1
Kaanaana v. Barrett Bus. Servs., Inc.,	
29 Cal App 5th 778, 788 (2018).....	11
Kim v. Reins International California, Inc.	
(2020) 9 Cal.5th 73, 88;.....	6
Laffitte v. Robert Half Int'l Inc.,	
1 Cal.5th 480, 504, 506 (2016).....	14-15
Lane v. Facebook, Inc.	
(9th Cir. 2012) 696 F.3d 811, 819.....	12
Moniz v. Adecco USA, Inc. (2021)	
72 Cal.App.5th 56, 77, 88.....	6
N.A. v. Superior Court,	
8 Cal. 5th 175, 182 (2019).....	3-4
Naranjo v. Spectrum Security Services, Inc.	
(2022) 13 Cal. 5th 93.....	11
Pellegrino v. Robert Half Intern., Inc.,	
182 Cal.App.4th 278 (2010).....	14
Rider v. City of San Diego,	
11 Cal. App. 4th 1410, 1423 n.6 (1992).....	15
Rodriguez v. West Publ'g Corp.,	
563 F.3d 948, 958-59 (9th Cir. 2009).....	16

///

1	<i>Taylor v. FedEx Freight, Inc.</i> ,	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	15
2	<i>Vandervort v. Balboa Capital Corp.</i> ,	
	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	14
3	<i>Wershba v. Apple Computer, Inc.</i> ,	
	91 Cal.App.4th 224, 254 (2001)	12, 14
4	<i>White v. Experian Information Solutions, Inc.</i>	
	(C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098.....	13
5	<i>White v. Starbucks Corp.</i>	
	(N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083.....	7
6	<i>Williams v. Superior Court</i>	
7	(2017) 3 Cal.5th 531, 549.....	6

RULES, CODES, AND STATUTES

9	Violation of Cal. Bus. & Prof Code §§ 17200, <i>et seq.</i>	2
10	<i>Cal. Lab. Code</i> § 201, <i>et seq.</i>	2, 6
	<i>Cal. Lab. Code</i> § 202.....	2, 6
11	<i>Cal. Lab. Code</i> § 203.....	2
	<i>Cal. Lab. Code</i> § 204, <i>et seq.</i>	6
12	<i>Cal. Lab. Code</i> § 210.....	6
	<i>Cal. Lab. Code</i> § 218 <i>et seq.</i>	6
13	<i>Cal. Lab. Code</i> § 221.....	6
14	<i>Cal. Lab. Code</i> § 226, <i>et seq.</i>	2, 6, 11
	<i>Cal. Lab. Code</i> § 246.....	6
15	<i>Cal. Lab. Code</i> § 351.....	2
	<i>Cal. Lab. Code</i> § 382.....	13
16	<i>Cal. Lab. Code</i> § 558, <i>et seq.</i>	8
	<i>Cal. Lab. Code</i> § 510.....	2, 6
17	<i>Cal. Lab. Code</i> § 512.....	2, 6
	<i>Cal. Lab. Code</i> § 1174, <i>et seq.</i>	6
18	<i>Cal. Lab. Code</i> § 1194.....	2, 6
	<i>Cal. Lab. Code</i> § 1197, <i>et seq.</i>	2, 6
19	<i>Cal. Lab. Code</i> § 1197.1.....	2, 6
20	<i>Cal. Lab. Code</i> § 1198.....	6
	<i>Cal. Lab. Code</i> § 1199.....	6
21	<i>Cal. Lab. Code</i> § 2698, <i>et seq.</i>	2, 6
22	<i>Cal. Lab. Code</i> § 2699, <i>et seq.</i>	2-4, 6, 11, 13
	<i>Cal. Lab. Code</i> § 2802.....	2, 6, 9
23	<i>Cal. Lab. Code</i> § 2804.....	6
24	Industrial Welfare Commission Orders and Cal. Code of Regulations § 11050.....	6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Shawnette Snowden (“Plaintiff”) seeks approval of the PAGA Settlement Agreement
4 (“Agreement”)¹, which if approved, would provide monetary relief for approximately 132
5 “Aggrieved Employees,” defined as all current and former non-exempt employees who worked for
6 Palmdale 794 Inc. dba IHOP 794 (“Defendant”) in California during the period from November 28,
7 2021, to June 1, 2024. (“PAGA Period”). Agreement at §§ 1.6; 1.22; 4.1. This is only a settlement
8 of the PAGA claim for civil penalties and is not a class settlement and does not release the individual
9 wage claims, if any, of the Aggrieved Employees. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS*
10 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
11 (unpaid wages are not recoverable under PAGA).

12 If approved, the Aggrieved Employees and the California Labor Workforce and Development
13 Agency (“LWDA”) will share the PAGA Penalties of approximately Fifty-Four Thousand Dollars
14 and Zero Cents (\$54,000.00). The PAGA Penalties shall be distributed, 75% to the LWDA (“LWDA
15 PAGA Payment”) and 25% to the Aggrieved Employees (“Individual PAGA Payments”). §
16 Agreement at 3.2.3.

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

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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.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

On November 28, 2022, Plaintiff, on behalf of herself and on behalf of other Aggrieved Employees, served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint specifying claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately pay meal and rest premiums; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; and failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-921533-22). JCL Dec., ¶ 11.

On February 2, 2023, Plaintiff filed a class action complaint against Defendant in the Superior Court for Los Angeles, Case Number 23STCV02326 (the "Action"). The complaint alleged ten causes of action for (1) Unfair Competition in Violation of Cal. Bus. & Prof Code §§ 17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Labor Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.37 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Labor Code § 2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201-203; (8) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226; (9) Failure to Provide Gratuities in Violation of Cal. Labor Code § 351; and (10) Violation of the Private Attorneys General Act §§ 2698 *et seq.* JCL Dec., ¶ 10.

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 it 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. JCL Dec., at ¶ 12.

Subsequently, Defendant produced an arbitration agreement which purportedly barred Plaintiff's class action claims. Plaintiff filed a request for dismissal of the class claims. JCL Dec., at ¶ 13.

1 On June 26, 2023, Plaintiff filed a First Amended Complaint, the operative Complaint, in the
2 Action, alleging a single cause of action for civil penalties under the Private Attorney Generals Act
3 (“PAGA”). JCL Dec., ¶ 14.

4 On May 2, 2024, the Parties participated in an all-day mediation presided over by Steve Mehta,
5 Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation,
6 Defendant provided Plaintiff with sufficient information and documents to properly evaluate
7 Defendant’s potential liability exposure. Defendant produced, among other things, the total number of
8 Aggrieved Employees, pay periods, employee handbooks, and 52% sample of the Aggrieved
9 Employees’ time and payroll data. JCL Dec., at ¶ 15.

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

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

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

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

4 **A. The Gross Settlement Amount**

5 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
6 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount in the
7 amount of One Hundred Thirty-Five Thousand Dollars and Zero Cents (\$135,000.00) to resolve the
8 PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA Counsel Award
9 in the amount Sixty-Five Thousand Dollars and Zero Cents (\$65,000.00), comprised of one-third of
10 the Gross Settlement Amount (estimated to be approximately \$45,000.00) and reimbursement of
11 incurred litigation expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents
12 (\$20,000.00), and Claims Administration Costs which will not exceed Six Thousand Dollars and Zero
13 Cents (\$6,000.00). Agreement generally at §§ 3.1; 3.2.1; 3.2.2. After these deductions, the amount
14 remaining is the “PAGA Penalties,” which is estimated to be \$54,000.00. JCL Dec., ¶ 19.

15 The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the
16 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
17 Payment, and the Administrator’s Expenses Payment. Agreement at § 1.12.

18 Of the PAGA Penalties Payment, seventy-five percent (75%) shall be paid to the LWDA, and
19 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Aggrieved
20 Employee Payment”). Agreement at §§ 1.25, 3.2.3. This 75/25 allocation is required by Labor Code
21 § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

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

23 The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved
24 Employees’ 25% share of PAGA Penalties (\$13,500.00) by the total number of PAGA Pay Periods
25 worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each
26 Aggrieved Employee’s PAGA Pay Periods. Agreement at § 3.2.3.1 The PAGA Period is the period
27 between November 28, 2021, to June 1, 2024. Agreement at § 1.22.

28 At the time of the parties’ settlement of this Action, Defendant estimated that there were

1 approximately 132 Aggrieved Employees who worked approximately 3,200 pay periods during the
2 PAGA Period based on company records. Agreement at § 4.1.³

3 **C. Funding and Distribution**

4 Provided that an order approving this Settlement is entered by the Court, Defendant shall fund
5 the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen
6 (14) calendar days after the Effective Date. Agreement at § 4.3. Within fourteen (14) calendar days
7 after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the
8 Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last known
9 mailing address. Agreement at § 4.4. Settlement checks issued to Aggrieved Employees will expire
10 one hundred eighty (180) days from the date they are issued by the Settlement Administrator.
11 Agreement at § 4.4.1. If the check remains uncashed by the expiration of the 180-day period, the
12 Settlement Administrator shall transmit the funds represented by such checks to the California
13 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.4.3.
14 The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form 1099s.
15 Agreement at § 3.2.3.2.

16 **D. Release of Claims**

17 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of California,
18 the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in the
19 Agreement) from the Released PAGA Claims, which include all claims for PAGA penalties that were
20 alleged, or reasonably could have been alleged, based on the facts alleged in the Operative Complaint
21 and the PAGA Notice, including, but not limited to PAGA penalties arising from alleged failure to
22 pay for all hours worked, including off the clock work, minimum wages and overtime, failure to
23 provide compliant meal and rest periods, inaccurate wage statements, untimely payment of wages,
24 failure to pay wages at termination, failure to keep accurate records of hours worked, failure to
25 reimburse business expenses, wage statement violations, reporting time violations, regular rate
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 3,200. For example, if the total Pay Periods in the PAGA Period are 115% of 3,200,
the Gross Settlement Amount shall increase by 5%. Agreement at § 8.

1 violations, unlawful rounding practices, timekeeping manipulation, tip pooling violations, unlawful
2 deductions, Private Attorneys General Act of 2004, Labor Code sections 201, 201.3, 202, 204, 204.1,
3 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
4 1197.1, 1197.14, 1198, 1199, 2698, 2699 et seq., 2699.3, 2699.5, 2802, 2804, and the applicable
5 Industrial Welfare Commission Orders and California Code of Regulations, Title 8, section 11050.
6 Plaintiff and the Aggrieved Employees shall be deemed to have acknowledged and agreed that their
7 claims in this Action are wholly denied and heavily disputed by Defendant, and that the payments to
8 them set forth in this Agreement constitute payment of all sums allegedly due to them pursuant to
9 PAGA. Agreement at § 5.1.

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

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

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

2 The Gross Settlement Amount of \$135,000.00 is fair and reasonable and, therefore, should be
3 approved. Based on the data and information provided by Defendants in mediation, and with Plaintiff's
4 expert's assistance and analysis, *without stacking* the PAGA penalties, Plaintiff estimated that
5 Defendant's theoretical maximum PAGA liability exposure is approximately \$640,500 in PAGA
6 Penalties. JCL Dec., ¶ 20. Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff
7 estimated Defendant's theoretical maximum PAGA liability exposure at approximately \$961,200. JCL
8 Dec., ¶ 21. Plaintiff, however, substantially discounted that number to account for Defendants'
9 procedural and merits-based defenses, of which there are many. Defendant vehemently denies the
10 accuracy of Plaintiff's purported calculation of Defendant's liabilities.

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

12 Plaintiff alleges she and other Aggrieved Employees worked off-the-clock pre-shift to undergo
13 mandatory COVID-19 health screenings, including a temperature check and filling out an attestation
14 form. Plaintiff estimates that this would take approximately 5-15 minutes per shift. Further, Plaintiff
15 alleges she and other Aggrieved Employees regularly worked off-the-clock pre-shift and post-shift to
16 perform work for Defendant, including busing and cleaning tables, rolling silverware, and performing
17 keyholder duties. JCL Dec., ¶ 22.

18 In response to Plaintiff's wage claims, Defendants argued its time keeping policies are
19 legally compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved
20 employees for all hours worked at the correct rates consistent with its compliant payroll policies. It
21 further argued that employees lost no time waiting to use time clocks or due to COVID wellness
22 checks, which per Defendant were not "off the clock." Defendants also emphasized off the clock work
23 by employees was strictly prohibited by Defendant, and if any such off the clock work occurred it was
24 against company policy and done without the employer's knowledge. *White v. Starbucks Corp.* (N.D.
25 Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of
26 the off the clock work). Per Defendant, resolution of this claim on a representative basis would be
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1 unmanageable because it necessarily would entail numerous individualized inquiries. JCL Dec.,
2 ¶ 23.

3 Moreover, Defendant argues that Plaintiff cannot show that she personally suffered any Labor
4 Code violations during the short time she worked for Defendant. For this and other reasons, as well,
5 Defendant argues that Plaintiff does not have standing to represent herself or any other allegedly
6 Aggrieved Employees in this action. JCL Dec., ¶ 24.

7 Ignoring Defendant's defenses, Plaintiff estimates Defendant's maximum exposure for this
8 claim to be approximately \$313,400. JCL Dec., ¶ 25.

9 **ii. Estimated Penalties for Meal and Rest Period Violations**

10 Plaintiff alleges that Defendant's time records reflected non-compliant meal periods, and that
11 Defendant regularly failed to provide meal periods to Plaintiff and other Aggrieved Employees.
12 Plaintiff also alleges that because of their rigorous work schedules, Plaintiff and Aggrieved Employees
13 were not able to take timely and duty-free rest periods Pursuant to California Labor Code section
14 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating
15 hours and days of work, including meal and rest period violations. Thus, because section 558(a)(1)
16 specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest
17 break claims. JCL Dec., ¶ 26.

18 Defendant offered multiple defenses. First, it emphasized that the written meal and rest
19 break policy generally was compliant, that it authorized and permitted all necessary breaks, that
20 alleged aggrieved employees received such breaks in full compliance with California law, and that
21 employees waived second meal periods. Defendants also argued that even to the extent missed/non-
22 compliant breaks occurred, it was in violation of company policy and would require significant
23 individual inquiries to determine the reasons underlying any such alleged violations and whether it
24 was by employee choice or some other reason. Moreover, Defendant argued that it routinely paid
25 many meal premiums for missed or untimely clock outs for meals, and that this eliminated liability.
26 Thus, per Defendants, any trial would be unmanageable on a representative basis because of these
27 individualized issues. JCL Dec., ¶ 27.

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1 As with meal breaks, Defendant argued the applicable rest break policies complied with
2 California law and authorized and permitted employees to take all required breaks. Defendant
3 further contended that, in light of the fact that recording rest periods is not required, any evidence of
4 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
5 anecdotal and individual issues would predominate on liability. Defendant also contended that it is
6 only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee actually
7 did not receive a fully-compliant rest break. This arguably would once again make a trial
8 unmanageable since the instances an employee missed a rest break would have to be tested on a case
9 by case basis to determine compliance. JCL Dec., ¶ 28.

10 Moreover, as stated above, Defendant argues that Plaintiff cannot show that she personally
11 suffered any Labor Code violations during the short time she worked for Defendant, and consequently
12 does not have standing to represent herself or any other allegedly Aggrieved Employees in this action.
13 She was paid for all hours worked, all overtime, and if she failed to clock out for meals, she was paid
14 all meal premiums. For this, and other reasons, Defendant asserts that Plaintiff is barred from suing
15 Defendant for PAGA claims on behalf of herself or any other Aggrieved Employees. JCL Dec., ¶ 29.

16 Ignoring all of Defendant's asserted defenses, Plaintiff estimates Defendant's maximum
17 exposure for these claims to be approximately \$170,400. JCL Dec., ¶ 30.

18 **iii. Estimated Liability for Defendant's Violation of Labor Code § 2802**

19 Plaintiff alleged that Defendant required Plaintiff and the Aggrieved Employees to use their
20 personal cell phone, purchase various supplies, and purchase work uniforms, all for Defendant's
21 benefit. Specifically, Plaintiff and other Aggrieved Employees were required to use their personal
22 cell phones for work-related communications, such as communications with management. Further,
23 Defendant required Plaintiff and other Aggrieved Employees to purchase aprons as part of their work
24 uniform. Plaintiff and the Aggrieved Employees were required to incur expenses for their personal
25 cell phone, supplies, and work uniforms for which they were not reimbursed or compensated. JCL
26 Dec., ¶ 31.

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1 Defendant argued that there was no need for employees to use personal phones for work
2 purposes. Moreover, Defendant argued that it was against its express policies for employees to use
3 cell phones at work while on duty. According to Defendant, if an employee used their own phones,
4 it was strictly for personal convenience rather than business necessity. As such, any such expenses
5 are not reimbursable. JCL Dec., ¶ 32.

6 Moreover, as stated above, Defendant argues that Plaintiff cannot show that she personally
7 suffered any Labor Code violations during the short time she worked for Defendant, and consequently
8 does not have standing to represent herself or any other allegedly Aggrieved Employees in this action.
9 She was paid for all hours worked, all overtime, and if she failed to clock out for meals, she was paid
10 all meal premiums. For this and other reasons, as well, Defendant argues that Plaintiff does not have
11 standing to represent herself or any other allegedly Aggrieved Employees in this action. JCL Dec., ¶
12 33.

13 Plaintiff estimated that Defendant's total exposure for this claim was approximately \$156,700
14 in penalties. JCL Dec., ¶ 34.

15 **iv. Estimated Penalties for Derivative Violations**

16 Plaintiff further alleged that the Defendant's labor code violations for non-compliant meal
17 and rest breaks and unpaid wages results in derivative liability for waiting time penalties and
18 penalties resulting from inaccurate wage statements. JCL Dec., ¶ 35.

19 Defendant emphasized that, to the extent they are derivative, then such claims will rise or
20 fall along with the primary claims, in addition to being subject to "good faith" and other
21 defenses available to Defendants. Accordingly, Plaintiff had to discount the value of these claims
22 significantly in light of these multiple potential defenses. Defendants also contended a substantial
23 discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as
24 it would be unfair to penalize Defendants multiple times for the same violation. JCL Dec., ¶ 36.

25 Plaintiff estimated Defendant's exposure for these claims to be \$7,300 for waiting time
26 penalties and \$313,400 for wage statement penalties. JCL Dec., ¶ 37.

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

28 Thus, Plaintiff could not have sustained any claims against Defendant of any kind, whether on

1 behalf of herself, the State of California, or other allegedly Aggrieved Employees.

2 Finally, the maximum penalty figure does not consider that Courts have complete discretion
3 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
4 the facts and circumstances of the particular case, to do otherwise would result in an award that is
5 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(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., supra*, 30 Cal. App. 5th at 529 (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*, 90 Cal. App. 5th 548 (2023), *as modified* (May 9, 2023), *reh’g denied*
19 *(May 15, 2023)*, *review denied* (July 12, 2023), *and disapproved of by Naranjo v. Spectrum Sec. Servs.,*
20 *Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that a penalty
21 of 15% of the maximum PAGA penalties was the appropriate penalty). Thus, the Gross Settlement
22 Amount obtained by PAGA Counsel is even more than reasonable in light of Defendant’s arguments.
23 JCL Dec., ¶ 38.

24 Given Defendant’s defenses to the claimed Labor Code violations at issue, and the risks and
25 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
26 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL
27 Dec., ¶ 30. The LWDA has been provided with notice of this motion and the PAGA settlement, and
28 the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given

1 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
2 protect its own rights. JCL Dec., ¶¶ 5, 40.

3 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, any
4 one of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to raise all
5 these defenses at trial or in a motion for summary judgment. Accordingly, Plaintiff faced risky issues
6 going forward with this litigation, and it could have taken years to realize any recovery in this
7 action along with the possibility of post-trial appeals. In addition to its merits defenses and
8 arguing trial would be unmanageable, Defendants also intended to raise additional defenses on
9 damages, including the proper measure of civil penalties and the appropriate discount to place on any
10 assessment of such penalties. JCL Dec., ¶ 41.

11 Although Plaintiff and her counsel believe they could have prevailed, there was no such
12 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
13 merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to
14 recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all
15 claims and convince the Court to award full penalties for each and every pay period at issue, which
16 outcome is highly unlikely. Given Defendants' procedural and merits defenses, as well as the
17 substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed
18 settlement is eminently reasonable. JCL Dec., ¶ 42.

19 Importantly, the mere fact that a settlement does not provide the same recovery as might be
20 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
21 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (“even if the relief afforded by the
22 proposed settlement is substantially narrower than it would be if the suits were to be successfully
23 litigated, this is no bar to a class settlement because the public interest may indeed be served by a
24 voluntary settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
25 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a
26 proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself,
27 mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane v.
28 Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is

1 fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation
2 of the reviewing court"); *White v. Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d
3 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
4 99% discount off the maximum value of the claims). JCL Dec., ¶ 43.

5 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the
6 probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce any
7 penalty award all are accounted for, it is clear a settlement amount of \$135,000 for the PAGA claim is
8 well within the ballpark of reasonableness, and approval is appropriate. JCL Dec., ¶ 44.

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

10 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
11 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
12 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
13 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
14 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
15 herein, the settlement terms for attorneys' fees and costs are reasonable. JCL Dec., ¶ 45.

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 \$45,000.00 (one-third of the Gross Settlement Amount) and reimbursement of litigation
19 costs not to exceed \$20,000.⁴ PAGA does not have any requirements for reviewing attorneys' fees,
20 and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter
21 of contract for a contingent representation. Nevertheless, should this Court review the requested
22 attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel.
23 JCL Dec., ¶ 46.

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28 ⁴ 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 **A. The Requested Attorneys' Fee is Fair and Reasonable**

2 The requested PAGA Counsel Award of \$65,000.00, comprised of \$45,000.00 for attorneys'
3 fees and reimbursement of litigation expenses of up to \$20,000 is fair, reasonable, and justified by the
4 result achieved. Agreement at § 3.2.1; JCL Dec., ¶ 47.

5 PAGA Counsel negotiated a recovery of \$135,000.00, and this result justifies the requested
6 fees equal to one third of this recovery. This percentage is within the standard contingent recovery
7 percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in
8 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought, the
9 result was far from certain. Defendant's defenses to the merits of the case created difficulties with
10 proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by
11 Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant
12 asserted that its employment practices complied with all applicable labor laws, that Plaintiff lacked
13 standing to bring a PAGA claim and represent other allegedly Aggrieved Employees because she
14 personally suffered no violations of any kind during her entire two-month employment with
15 Defendant, and that Plaintiff had signed a full release of claims prior to ever filing any claims against
16 Defendant. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the
17 Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant
18 maintains that these defenses have merit and therefore present a serious risk to recovery. The
19 Settlement was possible because Defendant wanted to avoid the inherent risks and expense of PAGA
20 litigation. JCL Dec., ¶ 48.

21 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
22 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting
23 the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506
24 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half*
25 *Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied
26 and affirming 1.75 multiplier); *Wershba*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can
27 range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal.
28 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*,

2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is \$53,807.00. JCL Dec., ¶¶ 6, 55-58; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a *negative* multiplier of 0.83 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$16,065 prosecuting this action (JCL Law Firm, APC - \$7,367.80 and Zakay Law Group, APLC - \$8,697.20). JCL Dec. ¶¶ 7, 59; Zakay Dec. ¶ 6. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation

1 fees; and expert costs which were all incurred during, and were necessary for the successful
2 prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 60.

3 **VI. PLAINTIFF’S SERVICE AWARD IS FAIR AND REASONABLE**

4 Incentive payments are intended to “compensate class representatives for work done on behalf
5 of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
6 sometimes, *to recognize their willingness to act as a private attorney general.*” *Rodriguez v. West*
7 *Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely approve
8 service awards to compensate named plaintiffs for the services they provide and the risks they incur
9 during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service
10 payments” to plaintiffs for their efforts in bringing class case). The factors courts use in determining
11 the amount of service awards include: (1) a comparison between the service awards and the range of
12 monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the
13 litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation.
14 *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th 785, 804-805 (2009).

15 The Settlement provides for a Service Award of \$10,000 for Plaintiff. The Service Award
16 payment is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting
17 PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the
18 status of her case and the strategies for prosecuting the claims and agreeing to provide Defendant a
19 broad general release of all claims arising out of her employment. Plaintiff willingly came forward to
20 act as a private attorney general in advocating for other allegedly Aggrieved Employees. In doing so,
21 Plaintiff assumed the serious risk of liability for Defendant’s costs and potentially fees if the case were
22 unsuccessful. JCL Dec., ¶ 61.

23 Plaintiff’s efforts in bringing the lawsuit conferred a monetary benefit to 132 Aggrieved
24 Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve the
25 Service Award in accordance with the Settlement Agreement. Plaintiff and PAGA Counsel also
26 respectfully request approval of the requested Service Award in the amount of \$10,000.00 to Plaintiff.
27 JCL Dec., ¶ 62.

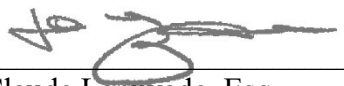
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1 **VII. CONCLUSION**

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

5 Dated: December 9, 2024

JCL LAW FIRM, APC

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7 By: 
8 Jean-Claude Lapuyade, Esq.
9 Attorney for Plaintiff
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