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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JUAN CABEZA, an individual, on behalf of
himself, and on behalf of all person similarly
situated,

Plaintiff,

v.

CENTRAL NEIGHBORHOOD HEALTH
FOUNDATION, a California non-profit
corporation; and DOES 1 through 50, Inclusive,

Defendants.

Case No. 21STCV44468

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

Date: May 2, 2023

Time: 9:00 a.m.

Judge: Hon. Elihu M. Berle

Dept.: 6

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
	A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA	2
	B. Plaintiff's Civil Action Against Defendant	2
III.	TERMS OF THE PAGA SETTLEMENT	4
	A. The Gross Settlement Amount	4
	B. Allocation of Individual PAGA Payments	4
	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
	B. The Remaining Settlement Terms Are Fair and Reasonable	11
V.	THE ATTORNEYS' FEES AND EXPENSES FAIR AND REASONABLE	11
	A. The Requested Attorneys' Fee is Fair and Reasonable	12
	B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	13
VI.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<i>Adolph v. Uber Technologies, Inc.</i> Case No. S274671.....	8
<i>Amiri v. Cox Communs. Cal., LLC</i> (C.D. Cal.) 272 F.Supp.3d 1187, 1194.....	9
<i>Boyd v. Bank of America,</i> 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	13
<i>Cal-Air Conditioning v. Auburn Union School Dist.</i> 21 Cal.App.4th 655, 668 (1993).....	11
<i>Cardenas v. McLane Foodservice, Inc.</i> 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	8
<i>Carrington v. Starbucks Corp.</i> 30 Cal. App. 5th 504, 529 (2018).....	10
<i>Cf. Estrada v. Royalty Carpet Mills, Inc.</i> (Cal.App. 4th Dist. March 30, 2022).....	9
<i>County of Tulare v. Campbell</i> 50 Cal. App. 4th 847, 853 (1996).....	11
<i>Downtown Palo Alto v. City Council</i> 180 Cal.App.3d 384, 395 (1986).....	10
<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).....	13
<i>Fleming v. Covidien, Inc.</i> 2011 WL 7563047, *4 (C.D. Cal. 2011).....	10
<i>Gola v. University of San Francisco</i> San Francisco Superior Court Case No. CGC-18-5655018.....	10
<i>Harris v. Marhoefer</i> 24 F.3d 16, 19 (9th Cir. 1994).....	13
<i>Hartless</i> 273 F.R.D. at 645-46.....	13
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), aff'd, 554 F. App'x 661 (9th Cir. 2014)...10	
<i>Hibbs-Rines v. Seagate Technologies</i> 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	9
<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).....	10
<i>Kim v. Reins Int'l Cal., 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).....	12-13

///

1	<i>Lifty v. Merrill Lynch & Co.</i>	
	(C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448.....	9
2	<i>Moniz v. Adecco USA, Inc.</i>	
	(2021) 72 Cal.App.5th 56, 77, 88.....	6-7
3	<i>Ortiz v. CVS Caremark Corp.</i>	
	(N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833.....	9
4	<i>Pellegrino v. Robert Half Intern., Inc.</i>	
	182 Cal.App.4th 278 (2010).....	12
5	<i>Rider v. City of San Diego</i>	
	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	13
6	<i>Taylor v. FedEx Freight, Inc.</i>	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	13
7	<i>Vandervort v. Balboa Capital Corp.</i>	
	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	12
8	<i>Viking River Cruises v. Moriana,</i>	
	(2022) 142 S.Ct. 1906.....	8, 10
9	<i>Wershba v. Apple Computer, Inc.</i>	
	91 Cal.App.4th 224, 254 (2001).....	12
10	<i>Wesson v. Staples the Off. Superstore</i>	
	2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).....	9-10
11	<i>Williams v. Superior Court</i>	
	(2017) 3 Cal.5th 531, 549.....	6
12	<i>Zayerz v. Kiewit Infrastructure West</i>	
	2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	8
13	<i>ZB, N.A. v. Superior Court</i>	
	8 Cal. 5th 175, 182, 196 (2019).....	1, 4

RULES, CODES & STATUTES

17	<i>Cal. Bus. & Prof. Code</i> §§ 17200 et seq.....	2
18	<i>Cal. Code of Civ. Proc.</i> § 382.....	11
19	<i>Cal. Code of Regulations</i> Title 8 § 11040, subdiv. 5(A)-(B).....	6
20	<i>Cal. Lab. Code</i> § 201.....	2
	<i>Cal. Lab. Code</i> § 202.....	2
21	<i>Cal. Lab. Code</i> § 203.....	2
	<i>Cal. Lab. Code</i> § 204.....	6
22	<i>Cal. Lab. Code</i> § 210.....	6
	<i>Cal. Lab. Code</i> § 226.....	2, 10
	<i>Cal. Lab. Code</i> § 226(a).....	6
23	<i>Cal. Lab. Code</i> § 226.7.....	2
	<i>Cal. Lab. Code</i> § 226.8.....	6
24	<i>Cal. Lab. Code</i> § 227.7.....	6
	<i>Cal. Lab. Code</i> § 351.....	6
25	<i>Cal. Lab. Code</i> § 510.....	2, 6
26	<i>Cal. Lab. Code</i> § 512.....	2, 6
	<i>Cal. Lab. Code</i> § 558.....	6
27	<i>Cal. Lab. Code</i> § 1194.....	2, 6
	<i>Cal. Lab. Code</i> § 1197.....	2, 6
28	<i>Cal. Lab. Code</i> § 1197.1.....	2, 6

1	<i>Cal. Lab. Code</i> § 1198.....	6
2	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	2-3, 6
3	<i>Cal. Lab. Code</i> § 2699.....	3
4	<i>Cal. Lab. Code</i> § 2699(1).....	3, 6, 11
5	<i>Cal. Lab. Code</i> § 2699(1)(2).....	3, 6
6	<i>Cal. Lab. Code</i> § 2699(e)(2).....	10
7	<i>Cal. Lab. Code</i> § 2699(f)(2).....	7-8
8	<i>Cal. Lab. Code</i> § 2699(g)(1).....	1
9	<i>Cal. Lab. Code</i> § 2699.3(a)(2)(A).....	2
10	<i>Cal. Lab. Code</i> § 2802.....	2, 6

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan Cabeza (“Plaintiff”) seeks approval of the PAGA Settlement Agreement
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 386 “Aggrieved
5 Employees,” defined as all individuals employed by Defendant CENTRAL NEIGHBORHOOD
6 HEALTH FOUNDATION as non-exempt employees in California during the period between
7 October 1, 2020, to March 4, 2023 (“PAGA Period”). Agreement at § 1.4. 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 affected employees other than Plaintiff himself. Cal. Lab. Code §
10 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,
11 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA). See generally Agreement
12 at § 5.1.

13 If approved, the Aggrieved Employees and the California Labor Workforce and Development
14 Agency (“LWDA”) will share in a Gross Settlement Amount of Three Hundred Seventy-Five
15 Thousand Dollars and Zero Cents (\$375,000.00). Agreement at § 1.12. After deducting any Court-
16 approved Attorneys’ Fees, Attorneys’ Expenses, Enhancement Award and the Claims Administration
17 Expenses, the Net Settlement Amount shall be distributed, 75% to the LWDA and 25% to the
18 Aggrieved Employees. Agreement at §§ 1.13 and 3.2.

19 An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf
20 of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of
21 informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As
22 discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
23 Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the
24 Agreement. JCL Dec., at ¶¶ 8-9.

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28 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

On October 1, 2020, Plaintiff on behalf of himself and on behalf of other “Aggrieved Employees” served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to pay overtime wages in violation of Labor Code sections 510; failure to pay minimum wages in violation of Labor Code sections 1194, 1197 and 1197.1; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to reimburse employees for required expenses in violation of Labor Code section 2802; failure to provide accurate itemized wage statements in violation of Labor Code section 226; and failure to provide wages when due in violation of Labor Code sections 201, 202, and 203 (LWDA Case Number LWDA-CM-847016-21). JCL Dec., at ¶¶ 4, 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 they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised any of the Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 11.

B. Plaintiff's Civil Action Against Defendant

On December 7, 2021, Plaintiff filed a class action complaint against Defendant in the Superior Court for Los Angeles, Case Number 21STCV44468. The complaint alleged nine causes of action for (1) Unfair Competition in Violation of Cal. Bus. & Prof Code §§ 17200 et seq.; (2) Failure to Pay Overtime Wages in Violation of Cal. Labor Code § 510; (3) Failure to Pay Minimum Wages in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; (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 Itemized Wage Statements in Violation of Cal. Labor Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201-203; and (8) Violation of the Private Attorneys General Act at Cal. Lab. Code

1 §§2698, *et seq.* On March 10, 2022, based on the existence of an arbitration agreement, Plaintiff
2 dismissed the class action allegations and causes of action leaving a single cause of action for Violation
3 of the Private Attorney General Act. JCL Dec., ¶ 12.

4 On January 4, 2023, the Parties attended a full-day mediation with experienced wage and hour
5 class and PAGA action mediator Hon. Carl J. West (Ret.). In advance of the with the mediation,
6 Defendant provided Plaintiff with sufficient information to properly evaluate Defendant’s liability
7 exposure for civil penalties to the Aggrieved Employees. Among the data and documents Defendant
8 produced included, but was not limited to, the total number Aggrieved Employees, workweeks, pay
9 periods, written wage and hour policies, employee handbooks, a 20% sample of all time and payroll
10 records for the Aggrieved Employees. JCL Dec., ¶ 13.

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

21 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by
22 Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a Settlement of
23 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
24 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
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1 PAGA claim.² Nor does this Settlement waive Defendant’s right to assert *res judicata* or other
2 available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 15.

3 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
4 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
5 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
6 submit to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement
7 within ten (10) days after entry of judgment or order. JCL Dec., at ¶¶ 5, 16.

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

9 **A. The Gross Settlement Amount**

10 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
11 The Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount”
12 payment in the amount of Three Hundred Seventy-Five Thousand Dollars and Zero Cents
13 (\$375,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction
14 of Attorneys’ Fees in the amount of \$125,000.00 (which is one-third of the Gross Settlement Amount),
15 reimbursement of incurred Attorneys’ Expenses in an amount not to exceed \$15,000.00, payment of
16 Plaintiff’s Service Award in the amount of \$10,000.00 and payment of Claims Administration
17 Expenses to the Settlement Administrator in an amount not to exceed \$7,500.00. Agreement at § 3.2.
18 Additionally, the Settlement Administration Costs, which will not exceed \$7,500.00, will be deducted
19 from the Gross Settlement Amount. Agreement at § 3.2.2. After these deductions, the amount
20 remaining is the “Net Settlement Amount,” which is estimated to be \$217,500. Agreement at § 3.2.2.

21 Of the “Net Settlement Amount,” seventy-five percent (75%) shall be paid to the LWDA and
22 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as Individual
23 PAGA Payments. Agreement at § 3.2.3. This allocation is required by Labor Code § 2699 as
24 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

25 **B. Allocation of Individual PAGA Payments**

26 The Individual PAGA Payments to the Aggrieved Employees shall be based on the number of
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 PAGA Pay Periods each Aggrieved Employee worked during the PAGA Period as a percentage of the
2 total PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. Agreement at
3 § 3.2.3.1.

4 At the time of mediation, Defendant estimated that there were approximately 386 Aggrieved
5 Employees who worked approximately 7,600 PAGA Pay Periods during the PAGA Period based on
6 company records. Should the number of PAGA Pay Periods increase by more than 10% of what was
7 represented at the mediation (i.e., if the PAGA Pay Periods exceed 8,360), Defendant shall either
8 increase the Gross Settlement Amount proportionally or agree to shorten the PAGA Period as of the
9 date on which the number of PAGA Pay Periods reaches 8,360. Agreement at § 4.1.

10 **C. Funding and Distribution**

11 Provided that an order approving this Settlement is entered by the Court, Defendant shall fund
12 the Gross Settlement Amount within thirty (30) days of the Effective Date. Agreement at § 4.3. The
13 Effective Date is the date the Court approves this Settlement. Agreement at § 1.11.

14 Within fifteen (15) calendar days of its receipt of the Gross Settlement Amount, the Settlement
15 Administrator will transmit the LWDA Payment to the LWDA as one lump sum payment. Agreement
16 at § 4.4.

17 No later than fifteen (15) calendar days after receipt of the Gross Settlement Amount, the
18 Settlement Administrator will mail the Individual PAGA Payments to the Aggrieved Employee by
19 regular First-Class U.S. Mail to the Aggrieved Employees' last known mailing address. § 4.4.
20 Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the
21 date they are issued by the Settlement Administrator. Agreement at § 4.4.1. If the check remains
22 uncashed by the expiration of the 180-day period, the Settlement Administrator shall cause the
23 aggregate sum represented by those uncashed checks to be sent to the State of California's Controller,
24 to be held in the name of each expired check payee. Agreement at § 4.4.3. The individual Aggrieved
25 Employee Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement §
26 3.2.3.2.

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1 **D. Release of Claims**

2 Upon entry of Judgment and funding of the Gross Settlement Amount, the Aggrieved
3 Employees shall release the Released Parties from the Released PAGA Claims. Agreement at §§1.25
4 and 5.1. The Released PAGA Claims means claims for civil penalties under California Labor Code
5 Sections 2698, et seq., predicated on the California Labor Code violations that are asserted in the
6 LWDA Notice and operative complaint which are for civil penalties pursuant to Labor Code section
7 2699, et seq. for violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 227.7, 226.8, 351,
8 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, section 11040,
9 subdivision 5(A)-(B), and applicable Industrial Welfare Commission Wage Orders. The release does
10 not include underlying wage and hour claims, claims for wrongful termination, discrimination,
11 unemployment insurance, disability, and workers' compensation, and claims outside of the PAGA
12 Period. The Released Claims do not include any claims that cannot be released as a matter of law.
13 Agreement at § 5.1.

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

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

state's interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently, 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 \$375,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 17. Here, *without stacking* the PAGA penalties, Defendant's *maximum* liability exposure is estimated at approximately \$760,000 in PAGA penalties (7,600 pay periods multiplied by \$100 per pay period³). JCL Dec., ¶ 18. Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff's third-party damages consultant estimated Defendant's maximum liability exposure at approximately \$2,580,000. Plaintiff's consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Unpaid Wages</i> Cal. Labor Code §§ 201, 202, 203, 204, 1194, 1197, 1997.1 1198 and 558	\$100	7,500	100% of PAGA Pay Periods	\$750,000
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$100	3,300	44% of PAGA Pay Periods	\$330,000
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$100	7,500	100% of PAGA Pay Periods	\$750,000
<i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	7,500	100% of PAGA Pay Periods	\$750,000

³ California Labor Code Section 2699(f)(2) provides the default penalty for PAGA violations of \$100 for initial violations and \$200 for subsequent violations.

1 Thus, the Gross Settlement Amount is between 14% and 49% of Defendant's potential
2 exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties
3 through continued litigation. JCL Dec., ¶¶ 18-20.

4 Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation
5 because it fails to account the risks of continued litigation including, but not limited to, Defendant's
6 defenses. *See, Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal.
7 January 18, 2018). For instance, Defendant contended that Plaintiff's PAGA claims could be and
8 likely would be wiped out in the light of the United States Supreme Court decision in *Viking River*
9 *Cruises v. Moriana*, (2022) 142 S.Ct. 1906. JCL Dec., ¶ 21.

10 In *Viking River*, the U.S. Supreme Court held that PAGA claims are preempted by the Federal
11 Arbitration Act, where, as here, arbitration agreements were signed by the employees. This posed a
12 very significant risk to Plaintiffs' case which was ultimately realized. *See Viking River Cruises v.*
13 *Moriana*, (2022) 142 S.Ct. 1906. Therefore, Plaintiff was mindful that their case could be potentially
14 wiped because of the U.S. Supreme Court's adverse decision. JCL Decl., ¶ 22. Plaintiff's claims are
15 arguably worthless in the post-*Viking River* world. *Cf. Adolph v. Uber Technologies* (California
16 Supreme Court has agreed to examine if SCOTUS relied on an incorrect understanding of California
17 state law in *Viking River*. Specifically, whether the representative side of the PAGA claim can, under
18 state law, continue even if the individual portion of the claim, if any exists, is compelled to arbitration).
19 *Id.*

20 Second, Defendant argued that it can only be assessed civil penalties for actual violations of
21 the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiffs
22 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice,*
23 *Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA],
24 a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
25 violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each
26 Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to
27 do, since Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
28 in this action. JCL Dec., ¶ 23.

1 Thus, Defendant contended that Plaintiff would be required to “prove Labor Code violations
2 with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties
3 under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).
4 When “determining whether the employer committed Labor Code violations with respect to each
5 employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore*,
6 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Decl., ¶ 24.

7 Third, Defendant contended that PAGA actions with numerous employees, many locations,
8 and different types of employees are not manageable and may be dismissed on that basis. *See, Wesson*
9 *v. Staples the Office Superstore*, (2021) 68 Cal.App.5th 746 (holding that courts can dismiss PAGA
10 claims if significant variation exists among aggrieved employees, who have unique factual situations)
11 *see also, Ortiz v. CVS Caremark Corp.* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833 (dismissing
12 PAGA claim as unmanageable because “a multitude of individualized assessments would be
13 necessary”); *Lifty v. Merrill Lynch & Co.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448 (striking
14 PAGA claim as unmanageable because “individualized issues predominate in this action” and a
15 “multitude of individualized assessments would be necessary”); *Amiri v. Cox Communs. Cal., LLC*
16 (C.D. Cal.) 272 F.Supp.3d 1187, 1194 (striking PAGA claim as unmanageable). Here, with over
17 10,000 aggrieved employees working at hundreds of different locations and in different types of jobs,
18 Defendant asserted that Plaintiffs’ theories were unmanageable. *Cf. Estrada v. Royalty Carpet Mills,*
19 *Inc.*, (Cal.App. 4th Dist. March 30, 2022) (disagreeing with *Wesson* and creating a split among the
20 Courts of Appeal on whether manageability is a prerequisite to bringing a PAGA claim). JCL Dec., ¶
21 25.

22 Fourth, a ballot initiative to eliminate PAGA has qualified for the 2024 ballot.
23 See [https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-](https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-2024-ballot/)
24 [2024-ballot/](https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-2024-ballot/). If this initiative passes, it will effectively repeal PAGA by taking away the ability to
25 pursue civil penalties via a representative action. Plaintiffs view this initiative as a significant
26 additional risk due to the potential limitation on her ability to recover penalties against Defendant
27 should litigation continue. JCL Dec., ¶ 26.

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 clearly
7 took the circumstances proffered by Starbucks into consideration when it imposed the penalty ... only
8 \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778, 788 (2018),
9 review granted on other grounds (noting that the trial court “exercised its discretion to reduce the
10 [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were
11 deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047,
12 *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties
13 for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no
14 injuries as a result of the erroneous wage statements and made no complaints about the errors or
15 omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also, Gola v.*
16 *University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed
17 Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex
18 (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was
19 the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light
20 Defendant’s arguments. Further, the adverse decisions in *Viking River Cruises* and *Wesson* pose very
21 significant, and even fatal, risk to Plaintiff’s case. JCL Dec., ¶ 27

22 Defendant’s substantial compliance could also operate to prevent the imposition of PAGA
23 penalties. JCL Dec., ¶ 28. A corollary of PAGA being an enforcement action is that “substantial
24 compliance with statutory directives will suffice if the purpose of the statute is thereby
25 satisfied.” *Downtown Palo Alto v. City Council*, 180 Cal.App.3d 384, 395 (1986) (emphasis
26 supplied); *see also Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 WL 12272348, at *8 (C.D. Cal.
27 Apr. 12, 2012), *aff’d*, 554 F. App’x 661 (9th Cir. 2014) (granting defendant’s motion for summary
28 judgment based on defendant’s “substantial compliance” with Labor Code section 226). In this regard,

1 “[t]he paramount consideration is the objective of the statute.” *Id.* “Where there is compliance as to
2 all matters of substance[,] technical deviations are not to be given the stature of noncompliance.” *Cal-*
3 *Air Conditioning v. Auburn Union School Dist.*, 21 Cal.App.4th 655, 668 (1993) (emphasis supplied).
4 “Unless the intent of a statute can only be served by demanding strict compliance with its terms,
5 substantial compliance is the governing test.” *County of Tulare v. Campbell*, 50 Cal. App. 4th 847,
6 853 (1996) (emphasis supplied).

7 Given Defendant’s defenses to the claimed Labor Code violations at issue, and the risks and
8 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
9 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL
10 Dec., ¶ 29. The LWDA has been provided notice of this motion and the PAGA settlement, and the
11 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
12 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
13 protect its own rights. JCL Dec., ¶¶ 5, 30.

14 **B. The Remaining Settlement Terms Are Fair and Reasonable**

15 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
16 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
17 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
18 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
19 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
20 herein, the settlement terms for attorneys’ fees and costs are reasonable.

21 **V. THE ATTORNEYS’ FEES AND EXPENSES FAIR AND REASONABLE**

22 PAGA Counsel seeks approval of Attorneys’ Fees in the amount of \$125,000.00 (one-third of
23 the Gross Settlement Amount) and Attorneys’ Expenses not to exceed \$15,000.00⁴ for reimbursement
24 of actually incurred litigation expenses. PAGA does not have any requirements for reviewing
25 attorneys’ fees, and Plaintiff’s position is that the payment of attorneys’ fees and costs in this
26

27 _____
28 ⁴ As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$12,972.72 litigating this matter. Plaintiff
will provide the Court with a final amount of litigation costs at the time of hearing on this motion, but it is expected to be
slightly less than the \$15,000.00 provided for in the Agreement.

1 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
2 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
3 and hour counsel. JCL Dec., ¶ 31.

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

5 The requested Attorneys' Fee of \$125,000.00 and reimbursement of Attorneys' Expenses of
6 up to \$15,000.00 is fair, reasonable, and justified by the result achieved. Agreement at §§ 1.5 and
7 3.2.1; JCL Dec., ¶31. PAGA Counsel negotiated a recovery of \$375,000.00, and this result justifies
8 the requested fees equal to one third of this recovery. This percentage is within the standard contingent
9 recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme
10 Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought,
11 the result was far from certain. Defendant's defenses to the merits of the case created difficulties with
12 proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by
13 Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant
14 asserted that its employment practices complied with all applicable Labor laws. If successful,
15 Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees.
16 While Plaintiff believes that these defenses could be overcome, Defendant maintains that these
17 defenses have merit and therefore present a serious risk to recovery. The Settlement was possible
18 because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade Defendant that there was an
19 appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
20 overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 32.

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 v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
27 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8
28 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of

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

5 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels'
6 current combined loadstar is \$97,118.33. JCL Dec., ¶¶33-38; Declaration of Shani Zakay ("Zakay
7 Dec.") at ¶¶ 4-6. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a
8 negligible multiplier of 1.28– well below the 2.13 multiplier approved in *Laffitte* – and well within
9 the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S.
10 Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check
11 lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist.
12 LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check
13 lodestar multiplier of 1.7).

14 **B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably**
15 **Incurred Litigation Costs.**

16 Attorneys who create a common fund for the benefit of a class are entitled to payment from
17 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
18 counsel's incurred expenses because those who benefit from their effort should share in the cost. *See*
19 *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
20 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
21 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
22 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
23 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
24 filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion,
25 PAGA Counsel collectively expended \$12,972.72 prosecuting this action (JCL Law Firm, APC -
26 \$7,046.88 and Zakay Law Group, APLC - \$5,925.84). JCL Decl. ¶¶ 7, 39; Zakay Dec., ¶¶ 7-8.
27 PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients
28 including the following: filing fees; copying; postage; factual and legal research charges; mediation

1 fees; expert costs and travel expenses, which were all incurred during, and were necessary for the
2 successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 6, 40.

3 **VI. CONCLUSION**

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

7 Dated: March 2, 2022

JCL LAW FIRM, APC

8 By: 
9 Jean-Claude Lapuyade, Esq.