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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARIA G. GONZALEZ ROMERO, an
individual, on behalf of herself, and on behalf of
all other aggrieved employees,

Plaintiff,

v.

CABE BROTHERS RENTALS, LLC, a
California Limited Liability Company; CABE
BROTHERS, a California Corporation; and Does
1 through 50, Inclusive;

Defendants.

Case No. 22STCV18688

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

Date: December 13, 2024
Time: 9:00 a.m.

Judge: Hon. Colin P. Leis
Dept: 74

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	3
A.	The Gross Settlement Amount	3
B.	Allocation of Aggrieved Employee Payments	4
C.	Funding and Distribution	4
D.	Release of Claims	5
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	5
A.	The Gross Settlement Amount is Fair and Reasonable	6
i.	Estimated Liability for Unpaid Wages	8
ii.	Estimated Liability for Miscalculation of Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay	8
iii.	Estimated Penalties for Meal Break Violations	9
iv.	Estimated Penalties for Rest Period Violations	9
v.	Estimated Penalties for Unreimbursed Business Expenses	10

1	vi. Estimated Penalties for Derivative Violations	11
2		
3	B. The Gross Settlement Compares Favorably To The Likely Recovery	11
4		
5	C. The Remaining Settlement Terms Are Fair and Reasonable	13
6		
7	V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE	13
8		
9	A. The Requested Attorneys’ Fee is Fair and Reasonable	14
10		
11	B. PAGA Counsel are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	15
12		
13	VI. CONCLUSION	16
14		

///

TABLE OF AUTHORITIES

CASES

1		
2	<i>Alvarado v. Dart Container Corp. of California</i>	
3	(2018) 4 Cal.5th 542, 552-554.....	8-9
4	<i>Amaral v. Cintas Corp. No. 2</i>	
5	(2008) 163 Cal.App.4th 1157, 1209	7, 10
6	<i>Bernstein v. Virgin America, Inc.</i>	
7	(2021) 3 F.4th 1127, 1144	7, 10
8	<i>Boyd v. Bank of America,</i>	
9	2014 WL 6473804, at *11 (C.D. Cal. 2014).....	15
10	<i>Cardenas v. McLane Foodservice, Inc.,</i>	
11	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	11
12	<i>Carrington v. Starbucks Corp.</i>	
13	(2018) 30 Cal.App.5th 504	7, 12
14	<i>Dunk v. Ford Motor Co.</i>	
15	(1996) 48 Cal.App.4th 1794, 1800-1801.....	6
16	<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.,</i>	
17	2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	15
18	<i>Fleming v. Covidien, Inc.,</i>	
19	2011 WL 7563047, *4 (C.D. Cal. 2011)	12
20	<i>Gola v. University of San Francisco,</i>	
21	San Francisco Superior Court Case No. CGC-18-5655018.....	12
22	<i>Harris v. Marhoefer,</i>	
23	24 F.3d 16, 19 (9th Cir. 1994).....	15
24	<i>Hartless,</i>	
25	273 F.R.D. at 645-46	15
26	<i>Hibbs-Rines v. Seagate Technologies,</i>	
27	2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	12
28	<i>Hopkins v. Stryker Sales Corp.,</i>	
	No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	15
	<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).....	12
	<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).....	14-15
	<i>Moniz v. Adecco USA, Inc. (2021)</i>	
	72 Cal.App.5th 56, 77, 88.....	5-6
	<i>N.A. v. Superior Court,</i>	
	8 Cal. 5th 175, 182 (2019).....	1-2, 4, 6
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	(2022) 13 Cal. 5th 93.....	12
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	10
	<i>Pellegrino v. Robert Half Intern., Inc.,</i>	
	182 Cal.App.4th 278 (2010).....	14
	///	

1	<i>Rider v. City of San Diego</i> ,	
	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	15
2	<i>Taylor v. FedEx Freight, Inc.</i> ,	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	15
3	<i>Vandervort v. Balboa Capital Corp.</i> ,	
	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	14
4	<i>Villa v. United Site Servs. of California, Inc.</i>	
	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8	10
5	<i>Wesson v. Staples the Off. Superstore</i> ,	
	2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	12
6	<i>Wershba v. Apple Computer, Inc.</i> ,	
	91 Cal.App.4th 224, 254 (2001)	14
7	<i>Williams v. Superior Court</i>	
	(2017) 3 Cal.5th 531, 549.....	6
8	<i>Zayerz v. Kiewit Infrastructure West</i> ,	
	2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	11
9		
10		

RULES, CODES, AND STATUTES

11	<i>Cal. Lab. Code</i> § 201 et seq.....	5, 7
12	<i>Cal. Lab. Code</i> § 202.....	5, 7
	<i>Cal. Lab. Code</i> § 203.....	5, 7
13	<i>Cal. Lab. Code</i> § 204.....	5, 7
	<i>Cal. Lab. Code</i> § 210.....	5
14	<i>Cal. Lab. Code</i> § 218 et seq.....	5
	<i>Cal. Lab. Code</i> § 226 et seq.....	5, 7, 12
15	<i>Cal. Lab. Code</i> § 246.....	5, 7-8
	<i>Cal. Lab. Code</i> § 382.....	13
16	<i>Cal. Lab. Code</i> § 558 et seq.....	5, 7, 10
17	<i>Cal. Lab. Code</i> § 510.....	5
	<i>Cal. Lab. Code</i> § 512.....	5, 7
18	<i>Cal. Lab. Code</i> § 1174 et seq.....	5
	<i>Cal. Lab. Code</i> § 1194.....	5, 7
19	<i>Cal. Lab. Code</i> § 1197 et seq.....	5, 7
	<i>Cal. Lab. Code</i> § 1197.1.....	5, 7
20	<i>Cal. Lab. Code</i> § 1198.....	5, 7
21	<i>Cal. Lab. Code</i> § 1199.....	5
	<i>Cal. Lab. Code</i> § 2698 et seq.....	2, 5
22	<i>Cal. Lab. Code</i> § 2699 et seq.....	1-6, 11-13
	<i>Cal. Lab. Code</i> § 2802.....	5, 7, 11
23	<i>Cal. Lab. Code</i> § 2804.....	5
24		
25		
26		
27		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria G. Gonzalez Romero (“Plaintiff”) seeks approval of the PAGA Settlement
4 Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for
5 approximately 150 “Aggrieved Employees,” defined as all current and former non-exempt
6 employees who worked for Cabe Brothers Rentals, LLC and Cabe Brothers (“Defendants”) in
7 California during the period from December 15, 2020, to December 4, 2023. (“PAGA Period”).
8 Agreement at §§ 1.4; 1.21; 4.1. This is only a settlement of the PAGA claim for civil penalties and
9 is not a class settlement and does not release the individual wage claims, if any, of the affected
10 employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS*
11 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
12 (unpaid wages are not recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and
14 Development Agency (“LWDA”) will share the PAGA Penalties of One Hundred and Four
15 Thousand, Three Hundred Thirty-Three Dollars and Thirty-Four Cents (\$104,333.34). The PAGA
16 Penalties shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees
17 (“Aggrieved Employee Payment”). § Agreement at 3.2.3.

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

24
25
26 ///

27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
28 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 Defendants

On December 15, 2021, Plaintiff, on behalf of herself and on behalf of other Aggrieved Employees, served Defendants and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint outlining claims against Defendants for alleged violations of the California Labor Code, including claims for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; 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- 857782-21). 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., ¶ 11.

On June 7, 2022, Plaintiff filed a representative action complaint against Defendants in the Superior Court for Los Angeles, Case Number 22STCV18688 (the "Action"). The complaint alleged a single cause of action for violation of the Private Attorneys General Act § 2698, *et seq* ("PAGA"). JCL Dec., at ¶ 12.

Defendants provided Plaintiff with sufficient information to properly evaluate Defendants' potential liability exposure. Among the data and documents Defendants produced included, but was not limited to, the total number of Aggrieved Employees, pay periods, employee handbooks, and payroll data. JCL Dec., at ¶ 13.

On May 25, 2022, the Parties participated in an all-day mediation presided over the Hon. William C. Pate (Ret.), a retired judge and experienced mediator of wage and hour class and representative actions. Though the mediation did not conclude in a settlement, the Parties continued to engage in arms-length informal settlement discussions, and ultimately agreed on a settlement that was memorialized in the form of a Memorandum of Understanding ("MOU"). The Parties

1 subsequently drafted and negotiated a long-form settlement which is the subject of the instant
2 motion. The Settlement was negotiated in light of all known facts and circumstances and the
3 uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
4 representative claims and establishing manageability, the difficulty of proving Plaintiff’s claims in a
5 manageable trial, the merits of Defendants’ potential defenses, and the significant delay and
6 potential appellate issues inherent to litigation – and was reached after extensive arm’s length
7 negotiations. JCL Dec., ¶ 14.

8 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
9 by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of
10 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
11 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
12 PAGA claim.² JCL Dec., at ¶ 15.

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

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

19 **A. The Gross Settlement Amount**

20 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
21 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
22 payment in the amount of One Hundred Seventy Thousand Dollars and Zero Cents (\$170,000.00) to
23 resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA
24 Counsel Award in the amount Sixty-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-
25 Six Cents (\$61,666.66), comprised of one-third of the Gross Settlement Amount (estimated to be
26 approximately \$56,666.66) and reimbursement of incurred litigation expenses in an amount not to
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 exceed Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00), and Administrator
2 Expenses Payment, which will not exceed Four Thousand Dollars and Zero Cents (\$4,000.00).
3 Agreement generally at §§ 3.1; 3.2.1; 3.2.2. After these deductions, the amount remaining is the
4 “PAGA Penalties,” which is estimated to be \$104,333.34. JCL Dec., ¶ 17.

5 The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the
6 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
7 Payment, and the Administrator’s Expenses Payment. Agreement at § 1.11.

8 Of the PAGA Penalties Payment, seventy-five percent (75%) will be paid to the LWDA and
9 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Aggrieved
10 Employee Payment”). Agreement at §§ 1.16, 3.2.3. This 75/25 allocation is required by Labor Code
11 § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

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

13 The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved
14 Employees’ 25% share of PAGA Penalties (\$26,083.34) by the total number of PAGA Pay Periods
15 worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by
16 each Aggrieved Employee’s PAGA Pay Periods. Agreement at § 3.2.3.1 The PAGA Period is the
17 period between December 15, 2020 and December 4, 2023. Agreement at § 1.21.

18 At the time the parties reached the settlement, Defendants estimated that there were
19 approximately 150 Aggrieved Employees who worked approximately 2,601 pay periods during the
20 PAGA Period based on company records. Agreement at § 4.1.³

21 **C. Funding and Distribution**

22 Provided that an order approving this Settlement is entered by the Court, Defendants shall
23 fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty
24 (60) calendar days after the Effective Date. Agreement at § 4.3. Within fourteen (14) days after
25 Defendants fully fund the Gross Settlement Amount, the Settlement Administrator will mail the
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 2,601. For example, if the total Pay Periods in the PAGA Period are 115% of
2,601, the Gross Settlement Amount shall increase by 5%. Agreement at § 8.

1 Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last known
2 mailing address. Agreement at § 4.4. Settlement checks issued to Aggrieved Employees will expire
3 one hundred eighty (180) days from the date they are issued by the Settlement Administrator.
4 Agreement at § 4.4.1. If the check remains uncashed by the expiration of the 180-day period, the
5 Settlement Administrator shall transmit the funds represented by such checks to the Human Rights
6 Watch of Southern California. Agreement at § 4.4.3. The Aggrieved Employee Payments are 100%
7 penalties and shall be reported using IRS Form 1099s. Agreement at § 3.2.3.2.

8 **D. Release of Claims**

9 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
10 California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in
11 the Agreement) from the Released PAGA Claims, which include all released PAGA claims alleged
12 in the Operative Complaint and Plaintiff's PAGA Notice to the LWDA which occurred during the
13 PAGA Period, including but not limited to, claims under Labor Code sections 201, 201.3, 202, 203,
14 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
15 1197.1, 1197.14, 1198, 1199, 2802, 2804 and 2698, et seq., California Code of Regulations, Title 8,
16 Section 1 1070(14), the applicable Industrial Welfare Commission Wage Order(s), and any resulting
17 claim for attorneys' fees and costs and expressly excluding all other claims, including claims for
18 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers'
19 compensation, and PAGA claims outside of the PAGA Period. The Parties agree there is no statutory
20 right for any Aggrieved Employee to object, opt out or otherwise exclude himself or herself from the
21 Settlement. The Parties further agree there is no right or opportunity for any Aggrieved Employee to
22 appeal the approval of the PAGA settlement by the Court. This Agreement shall not be subject to
23 collateral attack by any Aggrieved Employee. The release of claims for PAGA penalties shall bind
24 the Aggrieved Employees, the LWDA, and the State of California. Agreement at § 5.1.

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

26 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
27 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
28 agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA*,

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

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

17 The Gross Settlement Amount of \$170,000.00 is fair and reasonable and, therefore, should be
18 approved. Here, without including derivative penalties, Defendants’ liability exposure is estimated at
19 approximately \$714,400 in PAGA Penalties. JCL Dec., ¶ 18. If derivative penalties are included (or
20 “stacked”), Defendant’s maximum liability exposure is estimated at approximately \$974,500.
21 Plaintiff estimated Defendants’ exposure as follows:
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Claim	Penalty Amount⁴	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50 ⁵	2,601	100% of PAGA Pay Periods	\$130,050
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	2,601	100% of PAGA Pay Periods	\$130,050
<i>Unpaid Wages Violations</i> Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$50	2,601	100% of PAGA Pay Periods	\$130,050
<i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	2,601	100% of PAGA Pay Periods	\$260,100
<i>Miscalculated Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay</i> Cal. Labor Code §§ 246, 201, 202, 203, 204	\$50	1,283	49.32% of PAGA Pay Periods	\$64,150
<i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	2,601	100% of PAGA Pay Periods	\$260,100

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 several reasons in this instance. First, 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 claim. Second, Defendants argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 [“Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”].) Separately, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. See, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if she prevailed in establishing the underlying Labor Code violations.

1 JCL Dec., ¶ 19.

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

3 Plaintiff alleges that Defendants failed to pay all wages due to Plaintiff and the Aggrieved
4 Employees. First, Plaintiff alleges she and other Aggrieved Employees worked off-the-clock when
5 receiving and answering work-related communications after hours. Defendants deny any practice of
6 failing to pay employees for work performed off-the-clock. Defendants argued that its written
7 policies strictly prohibited off-the-clock work, and thus, any work performed off-the-clock was in
8 violation of its policies. Defendants neither knew or should have known about any alleged off-the-
9 clock work. Considering Defendants’ defenses, Plaintiff estimates Defendants’ exposure for this
10 claim to be approximately \$130,050. JCL Dec., ¶ 20.

11 **ii. Estimated Liability for Miscalculation of Regular Rate of Pay for**
12 **Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay**

13 Plaintiff alleged that Defendants miscalculated the regular rate of pay for purposes of
14 calculating overtime and redeemed sick pay because Defendants failed to include non-discretionary
15 incentive compensation when calculating the rates for these pay categories. Specifically, Plaintiff’s
16 expert found additional compensation identified as “COMM-SVC WR” that was not properly
17 included in the regular rate of pay calculation for purposes of calculating and paying overtime and
18 sick pay. The regular rate of pay, which can change from pay period to pay period, includes
19 adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and
20 awards, shift differentials and the per-hour value of any non-hourly compensation the employee has
21 earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime
22 work, “an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]”
23 *Id.* at 553. Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for
24 non-exempt employees be based on either “the regular rate of pay for the workweek in which the
25 employee uses paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick
26 leave. Conversely, Defendants denied liability and asserted they paid the correct rate of pay for
27 purposes of overtime wages and sick pay. Defendants also argued that these bonuses were
28 discretionary and did not need to be included in the regular rate calculation for payment of overtime

1 wages and sick pay. Lastly, Defendants argue that this claim did not affect all Aggrieved Employees.
2 JCL Dec., ¶ 21.

3 Plaintiff estimated that Defendants' exposure for this claim was approximately \$64,150. This
4 number was calculated by multiplying the number of pay periods with a violation of overtime and/or
5 sick pay regular rate calculations by a violation rate of \$50 per pay period. JCL Dec., ¶ 22.

6 **iii. Estimated Penalties for Meal Break Violations**

7 Plaintiff also alleged that Defendants' time records reflected non-compliant meal periods.
8 Specifically, Plaintiff alleges that Defendants regularly violated the law by failing to provide meal
9 periods, providing late meal periods, providing short meal periods, and/or requiring employees to
10 work through their meal periods. JCL Dec., ¶ 23.

11 Conversely, Defendant asserted that it maintained facially compliant meal period policies and
12 practices throughout the PAGA Period, and that any non-compliant meal break was the result of
13 voluntary waiver of the same by the employee. Thus, Defendant argued that there was no potential
14 liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 24.

15 Plaintiff estimated the penalties for this claim at \$130,050. This number was calculated by
16 multiplying the number of total pay periods where there was a meal period violation by a violation
17 rate of \$50 dollars. The \$50 penalty rate was used for the same reasons as stated above. JCL Dec., ¶
18 25.

19 **iv. Estimated Penalties for Rest Period Violations**

20 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
21 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Aggrieved Employees
22 were not able to take timely and duty-free rest periods. JCL Dec., ¶ 26.

23 Because rest periods are not recorded, Plaintiff could not identify a violation rate. Plaintiff
24 therefore made the reasonable assumption that rest period violations were committed at a rate similar
25 to that of meal period violations. JCL Dec., ¶ 27.

26 Based on an estimated 100% of PAGA Pay Periods containing a violation, Plaintiff
27 contended that her claim for rest period violations was potentially worth approximately \$130,050.
28 This was calculated by multiplying the number of total pay periods with a rest period violation by a

1 violation rate of \$50 dollars. The \$50 penalty rate was used for a number of reasons in this instance.
2 First, Defendants argued that increased civil penalties for subsequent violations do not apply unless
3 the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it
4 was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144
5 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 [“Until the employer has
6 been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be
7 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”].) JCL
8 Dec., ¶ 28.

9 Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of
10 \$50 for violations of a Labor Code section regulating hours and days of work, including meal period
11 and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty,
12 Plaintiff used a \$50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 29.

13 Defendants argued that Plaintiff’s rest break claim would have mainly relied on the
14 testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would
15 have entailed competing testimony stating either rest breaks were taken, or rest breaks were
16 voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
17 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that
18 defendant may have an illegal, written rest break policy is insufficient for this Court to find that
19 common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13,
20 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy
21 does not generate uniform practices.”). JCL Dec., ¶ 30.

22 **v. Estimated Penalties for Unreimbursed Business Expenses**

23 Plaintiff alleged that Defendants required Plaintiff and other Aggrieved Employees to use
24 their personal cellular phones to communicate with fellow employees and to receive work-related
25 calls, emails, and text messages. Further, Plaintiff alleged that Defendants required Plaintiff and
26 other Aggrieved Employees to use their personal vehicles to pick up parts for the service department
27 at other dealerships. However, Defendants did not reimburse Plaintiff and other Aggrieved
28 Employees for these expenses. California employers who require employees to incur personal

1 business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal.
2 Labor Code § 2802(a), providing that “an employer shall indemnify his or her employee for all
3 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
4 his or her duties, or of his or her obedience to the directions of the employer...”). Defendants denied
5 any liability for this claim. Defendants argued that any cell phone use and use of personal vehicles
6 were not mandatory. JCL Dec., ¶ 31.

7 Plaintiff estimated that Defendants’ exposure for this claim was approximately \$260,100 in
8 penalties. This was calculated by multiplying the total number of pay periods by a violation rate of
9 \$100 per pay period. JCL Dec., ¶ 32.

10 **vi. Estimated Penalties for Derivative Violations**

11 Plaintiff further alleged that the Defendants’ labor code violations for non-compliant meal
12 and rest breaks and unpaid wages results in derivative liability for penalties resulting from
13 inaccurate wage statements. Plaintiff estimated Defendants’ exposure for these claims to be
14 \$260,100 for wage statement penalties. JCL Dec., ¶ 33.

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

16 Considering the above, the Gross Settlement Amount is approximately 17.4% of Defendants’
17 potential PAGA exposure if stacking of penalties is permitted. Without stacking, the Gross
18 Settlement Amount is approximately 23.7%. The Gross Settlement Amount compares favorably to
19 the likely recovery of PAGA penalties through continued litigation. Defendants’ maximum exposure
20 to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks
21 of continued litigation including, but not limited to, Defendants’ defenses. *See, Zayerz v. Kiewit*
22 *Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance,
23 Defendants argued that it can only be assessed civil penalties for actual violations of the Labor Code.
24 *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be
25 required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*,
26 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a
27 plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
28 violation of the Labor Code by the defendant.”].) To do this, Plaintiff would need to prove each

1 Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to
2 do, since Defendants deny any liability or wrongdoing of any kind associated with the claims alleged
3 in this action. JCL Dec., ¶ 34.

4 Thus, Defendants contended that Plaintiff would be required to “prove Labor Code violations
5 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
6 under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
7 2009). When “determining whether the employer committed Labor Code violations with respect to
8 each employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
9 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 35.

10 Finally, the maximum penalty figure does not consider that Courts have complete discretion
11 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
12 the facts and circumstances of the particular case, to do otherwise would result in an award that is
13 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
14 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
15 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
16 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
17 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
18 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
19 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
20 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
21 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
22 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
23 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
24 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
25 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
26 *see also, Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), as modified (May 9,
27 2023), *reh’g denied* (May 15, 2023), *review denied* (July 12, 2023), and *disapproved of by Naranjo*
28 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown

1 bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The
2 gross amount obtained by PAGA Counsel is reasonable in light of Defendants' arguments. JCL
3 Dec., ¶ 36.

4 Given Defendants' defenses to the claimed Labor Code violations at issue, the risks and costs
5 of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair
6 and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL Dec., ¶
7 37. The LWDA has been provided with notice of this motion and the PAGA settlement, and the
8 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
9 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
10 protect its own rights. JCL Dec., ¶¶ 5, 38.

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

12 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
13 2699(1) does not require that a court approve any other elements of the proposed settlement.
14 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
15 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
16 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
17 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
18 JCL Dec., ¶ 39.

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

20 PAGA Counsel seek approval of the PAGA Counsel Award, comprised of attorneys' fees in
21 the amount of \$56,666.66 (one-third of the Gross Settlement Amount) and reimbursement of
22 litigation costs not to exceed \$6,500.⁶⁷ PAGA does not have any requirements for reviewing
23 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
24 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
25

26 _____
27 ⁶ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$6,051.83 litigating this matter. Plaintiff
will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

28 ⁷ The Parties amended the Agreement to increase the litigation expenses from \$5,000 to \$6,500. The amendment is
attached to the Agreement.

1 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
2 and hour counsel. JCL Dec., ¶ 40.

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

4 The requested PAGA Counsel Award of \$63,166.66, comprised of \$56,666.66 for attorneys'
5 fees and reimbursement of litigation expenses of up to \$6,500 is fair, reasonable, and justified by the
6 result achieved. Agreement at § 3.2.1; JCL Dec., ¶ 41. PAGA Counsel negotiated a recovery of
7 One Hundred Seventy Thousand Dollars and Zero Cents (\$170,000.00), and this result justifies the
8 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
10 Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case
11 was brought, the result was far from certain. Defendants' defenses to the merits of the case created
12 difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several
13 defenses asserted by Defendants present serious threats to the claims of Plaintiff and the Aggrieved
14 Employees. Defendants asserted that their employment practices complied with all applicable labor
15 laws. If successful, Defendants' factual and legal defenses would eliminate *any recovery* to the
16 Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendants
17 maintain that these defenses have merit and therefore present a serious risk to recovery. The
18 Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel were able to persuade
19 Defendants that there was an appreciable risk that Plaintiff would prevail on the factual and legal
20 issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 42.

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

1 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
2 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
3 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
4 a 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
6 Counsels' current combined loadstar is \$65,936.50. JCL Dec., ¶¶ 6, 49-52; Declaration of Shani
7 Zakay ("Zakay Dec.") at ¶¶ 2-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's
8 loadstar with a multiplier of 0.85 – well below the 2.13 multiplier approved in *Laffitte* – and well
9 within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*,
10 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with
11 cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017
12 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-
13 check 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.
19 See *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
23 litigation costs for consultants, online legal research, copying, postage, long distance charges, travel
24 expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this
25 motion, PAGA Counsel collectively expended \$6,051.83 prosecuting this action (JCL Law Firm,
26 APC - \$3,242.62, Zakay Law Group, APLC - \$2,809.21). JCL Dec. ¶¶ 7, 53; Zakay Dec. ¶ 6.
27 PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
28 clients including the following: filing fees; copying; postage; factual and legal research charges;

1 mediation fees; and expert costs which were all incurred during, and were necessary for the
2 successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 54.

3 **VI. CONCLUSION**

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

7
8 Dated: November 18, 2024

JCL LAW FIRM, APC

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10 By: 
11 Jean-Claude Lapuyade, Esq.
12 Attorney for Plaintiff
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