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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

MAKIYA EPPS, an individual, TESSIE  
HALEY, an individual, on behalf of themselves,  
and on behalf of all persons similarly situated;

Plaintiffs,

vs.

SOAPY JOE'S GROUP, INC., a California  
corporation; BHCW, INC. dba SOAPY JOE'S  
CAR WASH; SOAPY JOE'S SAN MARCOS,  
INC.; SOAPY JOE'S BONITA, INC.; SOAPY  
JOE'S ESCONDIDO, INC.; SOAPY JOE'S  
SORRENTO VALLEY, INC.; SOAPY JOE'S  
IMPERIAL BEACH, INC.; SOAPY JOE'S  
SAN YSIDRO, INC.; SOAPY JOE'S LA  
MESA, INC.; SWEETWATER CAR WASH,  
LLC; SOAPY JOE'S OCEANSIDE, INC.;  
SOAPY JOE'S RANCHO SAN DIEGO, INC.;  
LORENS ATTHISHA, and individual, TALAL  
SHEENA, an individual, and DOES 1 through  
50, Inclusive,

Defendants.

Case No. 37-2022-00013622-CU-OE-CTL

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

Hearing Date: April 18, 2025

Hearing Time: 10:15 a.m.

Judge: Wendy M. Behan

Dept.: C-66

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs Makiya Epps (“Plaintiff Epps”), Tessie Haley (“Plaintiff Haley”), Jailene Martinez (“Plaintiff Martinez”), Ruben Agustin (“Plaintiff Agustin”), Ayden Naungayan-Slaby (“Plaintiff Naungayan-Slaby”), and Zoly Moua (“Plaintiff Moua”) (collectively, “Plaintiffs”) seek approval of the Stipulation of Settlement of PAGA Action and Release of PAGA Claims (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for approximately 1,900 Aggrieved Employees, defined as all current and former non-exempt employees who worked for Defendants Soapy Joe’s Group, Inc., BHCW, Inc. dba Soapy Joe’s Car Wash, Soapy Joe’s San Marcos, Inc., Soapy Joe’s Bonita, Inc., Soapy Joe’s Escondido, Inc., Soapy Joe’s Sorrento Valley, Inc., Soapy Joe’s Imperial Beach, Inc., Soapy Joe’s San Ysidro, Inc., Soapy Joe’s La Mesa, Inc., Sweetwater Car Wash, LLC, Soapy Joe’s Oceanside, Inc., Soapy Joe’s Rancho San Diego, Inc., Soapy Joe’s Convoy, Inc., Soapy Joe’s Cuyamaca Street, Inc., Soapy Joe’s EC1, Inc., Soapy Joe’s ECB, Inc., Soapy Joe’s Fallbrook, Inc., Soapy Joe’s Hacienda Drive, Inc., Soapy Joe’s Imperial Beach, LLC, Soapy Joe’s Main Street, Inc., Soapy Joe’s Miramar, Inc., Soapy Joe’s Mission Gorge Road, Inc., Soapy Joe’s Mission Gorge, Inc., Soapy Joe’s Mission Valley, Inc., Soapy Joe’s OPCO Holdings, Inc., Soapy Joe’s Paseo Del Norte, Inc., Soapy Joe’s PH, Inc., Soapy Joe’s Sabre Springs, Inc., Soapy Joe’s San Jacinto, Inc., Soapy Joe’s San Ysidro, LLC, Soapy Joe’s Skyline, Inc., Soapy Joe’s SYB, Inc., Soapy Joe’s University Avenue, Inc., Soapy Joe’s West Vista Way, Inc., Soapy Joe’s, Inc., Soapy Joe’s Imperial Beach, Inc., Lorens Attisha, and Talal Sheena (“Defendants”) in California during the period between February 10, 2021, and December 31, 2024 (“PAGA Period”). Agreement at §§ I.B and I.S. This is only a settlement of Plaintiffs’ PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiffs themselves. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

1 If approved, the Aggrieved Employees and the California Labor Workforce and Development  
2 Agency (“LWDA”) will share in a -Gross Settlement Amount of Seven Hundred Sixty Thousand  
3 Dollars and Zero Cents (\$760,000.00). Agreement at §§ I.I, III.A.1. After deducting any Court-  
4 approved PAGA Counsel Award, PAGA Representative Service Awards, and the Settlement  
5 Administration Costs, the Net Settlement Amount shall be distributed 75% to the LWDA and 25%  
6 to the Aggrieved Employees. Agreement at §§ I.J.

7 An objective evaluation of the proposed Settlement confirms that the relief negotiated on  
8 behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product  
9 of informed, adversarial, non-collusive and mediated negotiations between experienced counsel. As  
10 discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.  
11 Accordingly, Plaintiffs and PAGA Counsel respectfully request this Court grant approval of the  
12 Agreement. JCL Dec., at ¶ 12.

## 13 **II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

### 14 **A. Plaintiffs’ Exhaustion of Administrative Remedies Under PAGA**

15 On January 24, 2022, Plaintiff Epps and Plaintiff Haley served Defendants and the LWDA  
16 with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against  
17 Defendants for alleged violations of the California Labor Code, including California Labor Code  
18 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1,  
19 1198, 2800 and 2802, the applicable IWC Wage Orders. (LWDA Case Number LWDA-CM-864393-  
20 22). JCL Dec., at ¶¶ 4; 13.

21 On September 22, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-Slaby, and  
22 Plaintiff Moua filed a PAGA Notice with the LWDA and served the same on Defendants (LWDA  
23 Case Number LWDA-CM-983253-23). JCL Dec., at ¶¶ 5; 14.

24 Following Plaintiffs’ submission of the PAGA Notices, the 65-day “waiting period” on  
25 Plaintiffs’ right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed  
26 without the LWDA notifying Plaintiffs that it intended to investigate the claims in the PAGA Notices.  
27 To date, the LWDA still has not advised Plaintiffs of any intent to take action with respect to the  
28 claims in the PAGA Notices. JCL Dec., at ¶ 15.

1           **B. Plaintiffs' Civil Actions Against Defendants**

2           On April 12, 2022, Plaintiff Epps and Plaintiff Haley filed a Representative Action Complaint  
3 against Defendants in the Superior Court of the State of California, County of San Diego, Case No.  
4 37-2022-00013622-CU-OE-CTL, alleging a single cause of action for Violations of the Private  
5 Attorneys General Act (Labor Code §2698) (the “*Epps and Haley Action*” or the “PAGA Action”).  
6 JCL Dec., ¶ 16.

7           On December 7, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-Slaby, and  
8 Plaintiff Moua filed a Representative Action Complaint against Defendants in the Superior Court of  
9 the State of California, County of San Diego, Case No. 37-2023-00053126-CU-OE-CTL, alleging a  
10 single cause of action for Violations of the Private Attorneys General Act (Labor Code §2698) (the  
11 “*Martinez Action*”). JCL Dec., ¶ 17.

12           On December 27, 2022, Defendants filed a Motion to Compel Arbitration in the *Epps and*  
13 *Haley Action*. JCL Dec., ¶ 18.

14           On July 18, 2023, Plaintiff Epps filed an Arbitration Demand with the American Arbitration  
15 Association, designated *Makiya Epps v. Soapy Joe's Group, Inc.*, American Arbitration Association  
16 Case No. 01-23-0003-1833. JCL Dec., ¶ 19.

17           On July 18, 2023, Plaintiff Haley filed an Arbitration Demand with the American Arbitration  
18 Association, designated *Tessie Haley v. Soapy Joe's Group, Inc.*, American Arbitration Association  
19 Case No. 01-23-0003-1834. JCL Dec., ¶ 20.

20           On March 4, 2024, Plaintiff Epps and Plaintiff Haley filed an Amended Notice of Violations  
21 with the LWDA to add an additional allegation under California Code of Regulations, Title 8, Section  
22 1 1070(14) (Failure to Provide Seating) and served the same on Defendants. JCL Dec., ¶ 21.

23           On November 4, 2024, the Parties attended a global mediation presided over by Gig Kyriacou,  
24 Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation,  
25 Defendants provided Plaintiffs with sufficient information to properly evaluate Defendants' liability  
26 exposure for civil penalties to the Aggrieved Employees. The data and documents Defendants  
27 produced included, among other things, the total number of Aggrieved Employees and pay periods,  
28 written wage and hour policies, and a 35% sample of time and payroll records for the Aggrieved

1 Employees. The mediation concluded with a settlement, which was subsequently memorialized in the  
2 form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted  
3 and negotiated a long-form Settlement which is the subject of the instant motion. The Settlement was  
4 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation  
5 – including the risk of Plaintiffs not being able to maintain representative claims, the difficulty of  
6 proving Plaintiffs’ claims in a manageable trial, the merits of Defendants’ potential defenses, and the  
7 significant delay and potential appellate issues inherent to litigation – and was reached after extensive  
8 arm’s length negotiations, with the assistance of the mediator. JCL Dec., at ¶ 22.

9 On February 14, 2025, the Parties filed a Stipulation and [Proposed] Order for Leave to File  
10 First Amended Representative Action Complaint. Within ten (10) days of the Court granting leave to  
11 amend, Plaintiffs will file the Operative Complaint to consolidate all PAGA claims pled in the  
12 *Martinez* Action into the *Epps and Haley* Action. JCL Dec., at ¶ 23.

13 Upon the Court’s filing of the Operative Complaint, the Parties will file a joint motion  
14 requesting to dismiss, without prejudice, the *Martinez* Action. The Parties agree that although  
15 dismissal of the *Martinez* Action will be requested without prejudice, all claims asserted in the  
16 *Martinez* Action will be released upon the Court’s approval of this Settlement and the fulfillment of  
17 its terms. JCL Dec., at ¶ 24.

18 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by  
19 Plaintiffs on behalf of the Aggrieved Employees and the State of California. This is only a settlement  
20 of the PAGA claims for civil penalties and is not a class settlement and does not release the individual  
21 claims, if any, of the Aggrieved Employees other than those of Plaintiffs. This Settlement does not  
22 release any claim that is not a PAGA claim.<sup>2</sup> Nor does this Settlement waive Defendants’ right to  
23 assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 25.

24 Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of the  
25 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for  
26 settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiffs will  
27

28 <sup>2</sup> 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 Agreement within ten  
2 (10) days after entry of judgment or order. JCL Dec., at ¶¶ 7, 26.

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

#### 4 **A. The Gross Settlement Amount**

5 This PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).  
6 The Agreement negotiated by the Parties provides for a “Gross Settlement Amount” payment in the  
7 amount of Seven Hundred Sixty Thousand Dollars and Zero Cents (\$760,000.00) to resolve the  
8 Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of the PAGA  
9 Counsel Award consisting of attorneys’ fees of not more than one-third (1/3) of the Gross Settlement  
10 Amount (currently estimated to be Two Hundred Fifty-Three Thousand Three Hundred Thirty-Three  
11 Dollars and Thirty-Three Cents (\$253,333.33)) *and* costs and expenses supported by declaration not  
12 to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), payment of Settlement  
13 Administration Costs in an amount not to exceed Seven Thousand Nine Hundred Ninety Dollars and  
14 Zero Cents (\$7,990.00), and PAGA Representative Service Awards in the amount of Five Thousand  
15 Dollars and Zero Cents (\$5,000.00) or in an amount that the Court authorizes to be paid to each  
16 Plaintiff, in addition to their pro rata portion of the Aggrieved Employee Payment, for the work  
17 Plaintiffs have completed in representing the Aggrieved Employees. Agreement at § III.I.7, III.I.8,  
18 III.I.10. After these deductions, the amount remaining is the Net Settlement Amount in an amount  
19 currently estimated to be Four Hundred Thirty-Eight Thousand Six Hundred Seventy-Six Dollars and Sixty-  
20 Seven Cents (\$438,676.67). Agreement at § I.J.

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

#### 25 **B. Allocation of Aggrieved Employee Payments**

26 The Settlement Administrator will calculate each Aggrieved Employee Payment by (a)  
27 dividing the amount of the Aggrieved Employees’ 25% share of the Net Settlement Amount by the  
28 total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)

1 multiplying the result by each PAGA Employee's Pay Periods. Agreement at § III.I.1.

2 At the time of mediation, Defendants estimated that there were 1,900 Aggrieved Employees  
3 who worked 38,000 Pay Periods during the PAGA Period based on company records. If the actual  
4 number of Pay Periods worked by the Aggrieved Employees during the PAGA Period exceeds the  
5 estimated 38,000 Pay Periods by more than 10%, the Gross Settlement Amount will increase  
6 proportionally for the number of workweeks over 110% of 38,000 (41,800). Agreement at § III.A.2.

7 **C. Funding and Distribution**

8 Defendants shall fund the Gross Settlement Amount to the Settlement Administrator no later  
9 than thirty (30) calendar days after the Effective Date (the "Funding Date"). The Effective Date means  
10 the date the Court enters an order and judgment approving this Settlement. Agreement at §§ I.G, I.H.

11 On or before March 31, 2025, Defendants will deliver the Aggrieved Employee Data to the  
12 Settlement Administrator in the form of a Microsoft Excel spreadsheet that contains each Aggrieved  
13 Employee's full name; last known address; Social Security Number; start dates and end dates of  
14 employment; and any other information the Settlement Administrator deems necessary to accurately  
15 calculate the number of Pay Periods worked by each Aggrieved Employee during the PAGA Period.  
16 Agreement at § I.C.

17 Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to each  
18 Aggrieved Employee's last known mailing address no later than five (5) business days after the  
19 Funding Date together with the Notice of PAGA Settlement. Agreement at § III.I.4. Any checks issued  
20 to Aggrieved Employees shall remain valid and negotiable for one hundred eighty (180) days from  
21 the date of their issuance. Agreement at § III.I.6. If an Aggrieved Employee does not cash his or her  
22 settlement check within ninety (90) days, the Settlement Administrator will send a letter to the  
23 Aggrieved Employee advising that the check will expire after the 180<sup>th</sup> day and invite that Aggrieved  
24 Employee to request reissuance in the event the check was destroyed, lost, or misplaced. *Id.* In the  
25 event an Aggrieved Employee's check has not been cashed within one hundred eighty (180) days, all  
26 funds represented by such uncashed checks, plus any interest accrued thereon, shall be paid to the  
27 Legal Aid Society of San Diego, a Cy Pres, pursuant to California Code of Civil Procedure section  
28 384. *Id.*

1           **D.     Release of Claims**

2           Following the Court’s approval of the Settlement and upon Defendants’ funding of the Gross  
3 Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiffs, the  
4 LWDA, and the State of California release the Released Parties from the Released PAGA Claims for  
5 the PAGA Period. Agreement at § I.Y. The Released Parties are defined as Defendants and any of  
6 their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors,  
7 affiliates, divisions, and joint ventures, as well as each of their past, present, and future officers,  
8 directors, employees, partners, members, shareholders, agents, attorneys, insurers, reinsurers, assigns,  
9 and any individual or entity that could be jointly liable with Defendants. Agreement at § I.Z. The  
10 Released PAGA Claims include all claims for civil penalties under PAGA that were actually alleged  
11 or that could have been alleged based on the facts, claims, or allegations in the Actions, the PAGA  
12 notices submitted by Plaintiffs to the LWDA (including any amendments thereto), and/or the  
13 Operative Complaint, including, but not limited to: (a) penalties pursuant to Labor Code sections 201-  
14 204, 206.5, 210, 226, 226.3, 226.7, 246-248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1194, 1194.2,  
15 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2802, and 2804; (b) PAGA penalties for alleged violations of  
16 the applicable Industrial Wage Commission Wage Order(s); (c) claims for the attorneys’ fees and costs  
17 incurred in the prosecution of the Actions on behalf of the Aggrieved Employees; (d) any other  
18 remedies under PAGA, penalties, or interest based in whole or in part on the facts, claims, or  
19 allegations in the Actions, the PAGA notices submitted by Plaintiffs to the LWDA (including any  
20 amendments thereto), and/or the Operative Complaint; and (e) all claims that Plaintiffs and/or any of  
21 the Aggrieved Employees may have against Defendants or any of the Released Parties relating to the  
22 payment, taxation, and/or allocation of attorneys’ fees and costs to PAGA Counsel pursuant to this  
23 Agreement. Agreement at § I.Y.

24           Plaintiffs have each entered into separate, standalone settlement agreements whereby Plaintiffs  
25 agreed to release their individual claims in exchange for an individual settlement payment by  
26 Defendants. Agreement at § I.W. Plaintiffs’ release of claims is outlined in their separate agreements.  
27 Plaintiffs will file these settlement agreements under seal for the Court to review in camera, at the  
28

1 Court's request. The Parties are unaware of any other cases, including class, individual and PAGA,  
2 that might be affected by this settlement. JCL Dec., at ¶ 27.

#### 3 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

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

#### 21 **A. The Gross Settlement Amount is Fair and Reasonable**

22 The Gross Settlement Amount of \$760,000.00 is fair and reasonable and, therefore, should be  
23 approved. JCL Dec., ¶ 28. Here, *without stacking* the PAGA penalties, Defendants' liability exposure  
24 is estimated at approximately \$6,186,100 in PAGA penalties. JCL Dec., ¶ 29. Plaintiffs' expert  
25 consultant estimated Defendants' exposure as follows:

26

27

28

| Claim                                               | Penalty Amount | Number of Pay Periods w/ Violation | Violation Rate | Total Penalties |
|-----------------------------------------------------|----------------|------------------------------------|----------------|-----------------|
| <i>Meal Period Violations</i><br>Cal. Labor Code §§ | \$50           | 9,616                              | 27.6%          | \$480,800       |

|                                                                                                             |       |        |       |             |
|-------------------------------------------------------------------------------------------------------------|-------|--------|-------|-------------|
| 226.7 and 512                                                                                               |       |        |       |             |
| <b>Rest Period Violations</b><br>Cal. Labor Code §§<br>226.7 and 512                                        | \$50  | 9,616  | 27.6% | \$480,800   |
| <b>Wage Statement Violations</b><br>Cal. Labor Code § 226(a)                                                | \$50  | 34,830 | 100%  | \$1,741,500 |
| <b>Business Reimbursement Violations</b><br>Cal. Labor Code § 2802                                          | \$100 | 17,415 | 50%   | \$1,741,500 |
| <b>Unpaid Wages</b><br>Cal. Labor Code §§<br>201, 202, 203, 204, 510,<br>1194, 1197, 1997.1 1198<br>and 558 | \$50  | 34,830 | 100%  | \$1,741,500 |

JCL Dec., ¶ 29.

#### i. Estimated Penalties for Defendants' Alleged Meal Period Violations

Plaintiffs allege that Defendants failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiffs allege that as a result of Defendants' understaffing, Plaintiffs and other Aggrieved Employees were often required to work while clocked out during what was supposed to be their off-duty meal periods. Plaintiffs allege that their meal breaks were often cut short or interrupted to assist Defendants' customers and inexperienced employees. Plaintiffs' expert estimated the damages for this claim at \$480,800. This number was calculated by multiplying the extrapolated number of pay periods identified wherein the time records reflected a meal break violation, by a penalty of \$50. The \$50 penalty rate was used for a number of reasons in this instance. First, Pursuant to Cal. Lab. Code § 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, off-the-clock work resulting in minimum wage and overtime violations, and regular rate violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiffs used a \$50 penalty per violation for the meal break claims. 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. *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.”].) Third, 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 Plaintiffs would recover full penalty amounts even if they prevailed in establishing the underlying Labor Code violations. For these reasons, Plaintiffs utilized a \$50 penalty rate. JCL Dec., ¶ 30.

## **ii. Estimated Penalties for Defendants’ Alleged Rest Period Violations**

Plaintiffs further allege that Defendants failed to provide rest breaks. Specifically, Plaintiffs allege that as a result of Defendants’ understaffing, Plaintiffs and other Aggrieved Employees were often required to work during what was supposed to be their off-duty rest periods. Plaintiffs allege that their rest breaks were often cut short, interrupted, or completely missed in order to assist Defendants’ customers. Defendants argued that its rest period policy is fully compliant with California law and that Plaintiffs’ rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 (“Indeed, Plaintiffs’ own evidence confirms that the written policy does not generate uniform practices.”). Considering Defendants’ defenses, because time records do not monitor rest breaks, and assuming rest break violation occurred at a similar rate that meal break violations occurred, Plaintiffs estimate Defendants’ exposure for this claim to be approximately \$480,800. This number was calculated by multiplying the assumed violation rate by a penalty of \$50. A \$50 multiplier was used for the same reasons as outlined above. JCL Dec., ¶ 31.

## **iii. Estimated Penalties for Defendants’ Alleged Labor Code Section 226 Violations**

Plaintiffs allege that the wage statements furnished by Defendants to the Aggrieved Employees

1 were facially non-compliant with Cal. Lab. Code § 226(a)(8). Specifically, Plaintiffs allege that  
2 Defendants failed to include the name and address of the legal entity that is the employer on the wage  
3 statements issued to Aggrieved Employees. Plaintiffs estimate Defendants' exposure for this claim to  
4 be \$1,741,500. This number was calculated by multiplying the total number of pay periods by a penalty  
5 of \$50. The \$50 penalty rate was used for the same reasons as stated above. JCL Dec., ¶ 32.

6 **iv. Estimated Liability for Defendants' Violation of Labor Code §2802**

7 Plaintiffs allege that Defendants required Plaintiffs and Aggrieved Employees to use their  
8 personal cell phones, personal vehicles, and purchase and maintain their own uniforms, all for  
9 Defendants' benefit. Specifically, Plaintiffs allege that they and Aggrieved Employees were required  
10 to use their personal cell phones to receive and respond to work-related communications with  
11 supervisors, managers, and coworkers, assist customers with membership sign-ups, and download and  
12 use work related apps. Further, Plaintiffs allege that they and Aggrieved Employees were required to  
13 use their personal vehicles to travel between Defendants' locations. Finally, Plaintiffs allege that they  
14 and Aggrieved Employees were required to purchase and maintain their own uniforms. Defendants  
15 contend that Plaintiffs and Aggrieved Employees were reimbursed for the use of their personal cell  
16 phones, personal vehicles, and purchase and maintenance of their uniforms. Plaintiffs estimate  
17 Defendants' exposure for this claim to be \$1,741,500. This number was calculated by multiplying a  
18 50% violation rate by the total number of pay periods by a penalty of \$100. Plaintiffs used a 50%  
19 violation rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone, vehicle,  
20 and uniform expenses approximately once per month Cal. Lab. Code § 2802 does not specifically  
21 provide for a civil penalty amount. Thus, the \$100 penalty rate was used pursuant to Cal. Lab. Code §  
22 2699(f). JCL Dec., ¶ 33.

23 **v. Estimated Penalties for Unpaid Wages**

24 Plaintiffs allege that Defendants failed to pay for all hours worked. First, Plaintiffs allege that  
25 they and other Aggrieved Employees were required to work while off-the-clock but were not  
26 compensated for this time. Specifically, Plaintiffs allege that they and other Aggrieved Employees  
27 were required to perform work-related tasks before clocking in and after clocking out, including  
28 assisting customers, cleaning, and checking equipment. Plaintiffs allege that they and other Aggrieved

1 Employees were not compensated for this time spent working while off-the-clock. JCL Dec., ¶ 34.

2 Second, Plaintiffs allege that Defendants failed to include non-discretionary incentive  
3 compensation when calculating the regular rate of pay for purposes of overtime wages, meal period  
4 premiums, and redeemed sick pay. Specifically, Plaintiffs' expert found additional compensation  
5 identified as "Bonus" that was not properly included in the regular rate of pay calculation for purposes  
6 of calculating and paying overtime wages, meal period premiums, and sick pay. JCL Dec., ¶ 35.

7 Defendants argued, among other things, that all Aggrieved Employees were properly paid  
8 minimum and overtime compensation for all hours worked, that Aggrieved Employees were instructed  
9 not to work off-the-clock, and that the additional compensation listed above is non-discretionary.  
10 Plaintiffs' expert estimated the damages for this claim of unpaid wages, based on uncompensated off-  
11 the-clock work and regular rate of pay violations, at \$1,741,500. This number was calculated by  
12 multiplying the number of pay periods with violations by a penalty of \$50. The \$50 penalty rate was  
13 used for the same reasons as stated above. JCL Dec., ¶ 36.

#### 14 **B. The Gross Settlement Compares Favorably to The Likely Recover**

15 In light of the above, the Gross Settlement Amount is approximately 12.28% of Defendants'  
16 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery  
17 of PAGA penalties through continued litigation. JCL Dec., ¶ 37.

18 Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the litigation  
19 because it fails to account for the risks of continued litigation including, but not limited to, Defendants'  
20 defenses. Here, Defendants argued that they can only be assessed civil penalties for actual violations  
21 of 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, Plaintiffs would need to prove each  
26 Aggrieved Employee was subject to the alleged Labor Code violation. Thus, Defendants contended  
27 that Plaintiffs would be required to "prove Labor Code violations with respect to each and every  
28

1 individual on whose behalf plaintiff seeks to recover civil penalties under PAGA.” *Hibbs-Rines v.*  
2 *Seagate Technologies*, 2009 WL 513496, \*4 (N.D. Cal. Mar. 2, 2009). JCL Decl., ¶ 38.

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

24 Given Defendants’ defenses to the claimed Labor Code violations at issue, and the risks and  
25 costs of continued litigation, Plaintiffs 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., ¶ 40. The LWDA has been provided notice of this motion and the PAGA Settlement, and the  
28 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., ¶ 41.

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

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

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

11 PAGA Counsel seeks approval of not more than one-third (1/3) of the Gross Settlement  
12 Amount (currently estimated to be Two Hundred Fifty-Three Thousand Three Hundred Thirty-Three  
13 Dollars and Thirty-Three Cents (\$253,333.33)) and attorneys' expenses not to exceed \$30,000.00<sup>3</sup> for  
14 reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for  
15 reviewing attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in  
16 this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court  
17 review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage  
18 and hour counsel. JCL Dec., ¶¶ 42-52.

19 **A. The Requested PAGA Counsel Fees Payment is Fair and Reasonable**

20 The requested attorneys' fees of \$253,333.33 and reimbursement of attorneys' expenses of up  
21 to \$30,000.00 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a  
22 recovery of \$760,000.00, and this result justifies the requested fees equal to one-third (1/3) of this  
23 recovery. At the time this case was brought, the result was far from certain. Defendants' defenses to  
24 the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to  
25 overcome. Here, as noted above in section IV(A), several defenses asserted by Defendants present  
26 serious threats to the claims of Plaintiffs and the Aggrieved Employees. While Plaintiffs believe that  
27 these defenses could be overcome, Defendants maintain that these defenses have merit and therefore  
28

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<sup>3</sup> As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$23,987.12 litigating this matter.

1 present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes,  
2 PAGA Counsel was able to persuade Defendants that there was an appreciable risk that Plaintiffs  
3 would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as  
4 to monetary relief. JCL Dec., ¶ 43.

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

17 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels'  
18 current combined loadstar is \$148,710.00. JCL Dec., ¶60; Declaration of Shani Zakay ("Zakay Dec.")  
19 at ¶¶ 4-6; Declaration of Nicholas J. Ferraro ("Ferraro Dec.") at ¶ 27. Thus, PAGA Counsels' fee  
20 request is equal to PAGA Counsel's loadstar with a reasonable multiplier of 1.7 – well below the 2.13  
21 multiplier approved in *Laffitte*. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202  
22 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of  
23 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal.  
24 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

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

27 Attorneys who create a common fund for the benefit of a group of individuals are entitled to  
28 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 the filing of this motion, PAGA Counsel collectively expended \$23,987.12 prosecuting this action (JCL Law Firm, APC - \$10,637.08; Zakay Law Group, APLC - \$9,180.00; Ferraro Vega Employment Lawyers, Inc., - \$4,170.04). JCL Dec. ¶¶ 7, 54-55; Zakay Dec., ¶¶ 7-8; Ferraro Dec., ¶ 25. PAGA Counsels' out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec., ¶¶ 9, 63.

## V. CONCLUSION

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

Dated: March 26, 2025

**JCL LAW FIRM, APC**

By: 