

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF LUTHER RODDY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

LUTHER RODDY and SAVANNAH L.
BURNETT, individuals, on behalf of the state of
California, as a private attorneys general,

Plaintiffs,

v.

O'NEILL BEVERAGES CO. LLC, a Delaware
Limited Liability Company; and DOES 1-50,
Inclusive;

Defendants.

Case No. CIV2200067

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

Judge: Hon. Stephen P. Freccero
Courtroom: A

TABLE OF CONTENTS

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

1 C. The Remaining Settlement Terms Are Fair and Reasonable14

2

3 V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE14

4

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

6

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

8 Costs16

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

10

11 VII. CONCLUSION18

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

///

TABLE OF AUTHORITIES

CASES

1		
2	<i>Alvarado v. Dart Container Corp. of California</i>	
3	(2018) 4 Cal.5th 542, 552-554.....	8
4	<i>Amaral v. Cintas Corp. No. 2</i>	
5	(2008) 163 Cal.App.4th 1157, 1209	10
6	<i>Bell v. Farmers Ins. Exch.,</i>	
7	115 Cal.App.4th 715, 726 (2004).....	17
8	<i>Bernstein v. Virgin America, Inc.</i>	
9	(2021) 3 F.4th 1127, 1144	7, 10
10	<i>Boyd v. Bank of America,</i>	
11	2014 WL 6473804, at *11 (C.D. Cal. 2014).....	16
12	<i>Cal-Air Conditioning v. Auburn Union School Dist.,</i>	
13	21 Cal.App.4th 655, 668 (1993)	14
14	<i>Cardenas v. McLane Foodservice, Inc.,</i>	
15	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	12
16	<i>Carrington v. Starbucks Corp.</i>	
17	(2018) 30 Cal.App.5th 504	10, 13
18	<i>Clark v. American Residential Services, LLC,</i>	
19	175 Cal. App. 4th 785, 804-805 (2009).....	17
20	<i>County of Tulare v. Campbell,</i>	
21	50 Cal. App. 4th 847, 853 (1996)	14
22	<i>Downtown Palo Alto v. City Council,</i>	
23	180 Cal.App.3d 384, 395 (1986).....	13
24	<i>Dunk v. Ford Motor Co.</i>	
25	(1996) 48 Cal.App.4th 1794, 1800-1801.....	6
26	<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.,</i>	
27	2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	16
28	<i>Ferra v. Lowes Hollywood Hotel, LLC</i>	
	(2021) 11 Cal.5th 858.....	9
	<i>Fleming v. Covidien, Inc.,</i>	
	2011 WL 7563047, *4 (C.D. Cal. 2011)	13
	<i>Gola v. University of San Francisco,</i>	
	San Francisco Superior Court Case No. CGC-18-5655018.....	13
	<i>Harris v. Marhoefer,</i>	
	24 F.3d 16, 19 (9th Cir. 1994).....	16
	<i>Hartless,</i>	
	273 F.R.D. at 645-46	16
	<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 (9 th Cir. 2014)	
		14
	<i>Hibbs-Rines v. Seagate Technologies,</i>	
	2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	12
	<i>Hopkins v. Stryker Sales Corp.,</i>	
	No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	16
	<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).....	13

1	<i>Kim v. Reins International California, Inc.</i>	
2	(2020) 9 Cal.5th 73, 88;.....	6
3	<i>Laffitte v. Robert Half Int'l Inc.,</i>	
4	1 Cal.5th 480, 504, 506 (2016).....	15-16
5	<i>Moniz v. Adecco USA, Inc.</i> (2021)	
6	72 Cal.App.5th 56, 77, 88.....	6
7	<i>N.A. v. Superior Court,</i>	
8	8 Cal. 5th 175, 182 (2019).....	1, 4-5
9	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
10	(2022) 13 Cal. 5th 93.....	8
11	<i>Ordonez v. Radio Shack, Inc.</i>	
12	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	10
13	<i>Pellegrino v. Robert Half Intern., Inc.,</i>	
14	182 Cal.App.4th 278 (2010).....	16
15	<i>Rider v. City of San Diego,</i>	
16	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	16
17	<i>Rodriguez v. West Publ'g Corp.,</i>	
18	563 F.3d 948, 958-59 (9th Cir. 2009).....	17
19	<i>Taylor v. FedEx Freight, Inc.,</i>	
20	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	16
21	<i>Vandervort v. Balboa Capital Corp.,</i>	
22	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	16
23	<i>Viking River Cruises v. Moriana,</i>	
24	(2022) 142 S.Ct. 1906.....	12-13
25	<i>Villa v. United Site Servs. of California, Inc.</i>	
26	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8	10
27	<i>Wesson v. Staples the Off. Superstore,</i>	
28	2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	12-13
29	<i>Wershba v. Apple Computer, Inc.,</i>	
30	91 Cal.App.4th 224, 254 (2001)	16
31	<i>Williams v. Superior Court</i>	
32	(2017) 3 Cal.5th 531, 549.....	6
33	<i>Zayerz v. Kiewit Infrastructure West,</i>	
34	2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	11

RULES, CODES, AND STATUTES

22	<i>Cal. Lab. Code § 201</i>	7
23	<i>Cal. Lab. Code § 202</i>	7
24	<i>Cal. Lab. Code § 203</i>	7
25	<i>Cal. Lab. Code § 204</i>	7
26	<i>Cal. Lab. Code § 226</i>	7-8, 13-14
27	<i>Cal. Lab. Code § 226.2</i>	7
28	<i>Cal. Lab. Code § 226.7</i>	7
29	<i>Cal. Lab. Code § 246</i>	7
30	<i>Cal. Lab. Code § 382</i>	14
31	<i>Cal. Lab. Code § 558</i>	7, 10
32	<i>Cal. Lab. Code § 512</i>	7

1	<i>Cal. Lab. Code</i> § 1194.....	7
2	<i>Cal. Lab. Code</i> § 1197.....	7
3	<i>Cal. Lab. Code</i> § 1197.1.....	7
4	<i>Cal. Lab. Code</i> § 1198.....	7
5	<i>Cal. Lab. Code</i> § 2698 et seq.....	2
6	<i>Cal. Lab. Code</i> § 2699 et seq	1-4, 6, 7, 12-14
7	<i>Cal. Lab. Code</i> § 2802.....	7, 11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Savannah L. Burnett (“Plaintiff” or “Plaintiff Burnett”) seeks approval of the PAGA
4 Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief
5 for approximately 363 “Aggrieved Employees,” defined as all individuals who are or previously
6 were employed by O’Neill Beverages, Co. (“Defendant”) in California and classified as non-
7 exempt employees (“Aggrieved Employees”) at any time between November 1, 2020, through
8 January 28, 2024 (“PAGA Period”). Agreement at §§ I(B); I(G); I(S). This is only a settlement of
9 the PAGA claim for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code §
11 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior*
12 *Court*, 8 Cal. 5th 175, 182 (2019) (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 a payment for PAGA Payment of Three Hundred
15 Seventy-Five Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$375,666.67).
16 Agreement at § 1.25. After deducting any Court-approved PAGA Counsel Award, Service Award,
17 and the Claims Administration Costs, the PAGA Payment shall be distributed, 75% to the LWDA
18 and 25% to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § I(Q).

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

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 Defendant

On November 1, 2021, Plaintiff Luther Roddy ("Plaintiff Roddy"), 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 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-850662-21). JCL Dec., ¶ 10.

On January 10, 2022, Plaintiff Roddy filed a representative action complaint against Defendant in the Superior Court for Marin, Case Number CIV2200067 ("*Roddy Action*"). The Action alleged a single cause of action against Defendant for violations of the Private Attorneys General Act at Cal. Lab. Code §§2698, *et seq.* JCL Dec., ¶ 11.

On September 16, 2022, Plaintiff Burnett, on behalf of herself and on behalf of other Aggrieved Employees, served Defendant and the LWDA with a PAGA Notice and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code. (LWDA Case No. LWDA-CM-908384-22). JCL Dec., ¶ 12.

On March 10, 2022, Plaintiff Burnett filed a class action complaint in the Superior Court for Fresno, Case Number 22CECG02947, alleging nine causes of action for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6) Wage Statement Violations; (7) Failure to Timely Pay Wages; (8) Failure to Indemnify; and (9) Unfair Competition ("*Burnett Action*"). JCL Dec., at ¶ 13.

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

1 investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any
2 intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 14.

3 On May 30, 2023, the Court denied Defendant’s motion to compel arbitration of Plaintiff
4 Roddy’s Claims. JCL Dec., ¶ 15.

5 On October 17, 2023, the Parties participated in an all-day mediation presided over by Steve
6 Serratore, Esq., an experienced mediator of wage and hour representative actions. In advance of the
7 with the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate
8 Defendant’s potential liability exposure. Among the data and documents Defendant produced
9 included, but was not limited to, the total number of Aggrieved Employees, pay periods, employee
10 handbooks, and dozens of documents of time and payroll data. JCL Dec., ¶ 16.

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

20 On January 5, 2024, after reaching a settlement, Plaintiffs filed a First Amended Complaint
21 in the *Roddy* Action for the purposes of adding Plaintiff Burnett as a named Plaintiff and effectuating
22 settlement. On January 10, 2024, Plaintiff Roddy was dismissed from the Action after PAGA
23 Counsel was informed that he had passed away. JCL Dec. ¶ 18.

24 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
25 by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of
26 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
27 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
28

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 ¶ 19.

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
5 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
6 Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the
7 Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 20.

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 Six Hundred Twenty-Five Thousand Dollars and Zero Cents
13 (\$625,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction
14 of a PAGA Counsel Award in the amount of Two Hundred Thirty-Three Thousand, Three Hundred
15 Thirty-Three Dollars and Thirty-Three Cents (\$233,333.33), comprised of one-third of the Gross
16 Settlement Amount (estimated to be approximately \$208,333.33), reimbursement of incurred
17 litigation expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents
18 (\$25,000.00), Service Award to Plaintiff Burnett of up to Ten Thousand Dollars and Zero Cents
19 (\$10,000.00), and Claims Administration Costs which will not exceed Six Thousand Dollars and
20 Zero Cents (\$6,000.00). Agreement generally at § III(J)(8)-(10). After these deductions, the amount
21 remaining is the "PAGA Payment," which is estimated to be \$375,666.67. JCL Dec., ¶ 21.

22 The Gross Settlement Amount will be used to satisfy the Aggrieved Employee Payment, the
23 LWDA PAGA Payment, PAGA Counsel Award, Service Award, and the c. Agreement at § 1.11.

24 Of the PAGA Payment, seventy-five percent (75%) shall be paid to the LWDA and the
25 remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees ("Aggrieved
26 Employee Payment"). Agreement at §§ 1.23, 3.2.4. This 75/25 allocation is required by Labor Code
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."

§ 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of Aggrieved Employee Payment

The Aggrieved Employee Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment (\$93,916.67) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Agreement at § 3.2.4. The PAGA Period is the period between November 1, 2020, through January 28, 2024. Agreement at § 1.20.

At the time of the parties' settlement of this action, Defendant estimated that there were approximately 363 Aggrieved Employees who worked approximately 16,400 pay periods during the PAGA Period based on company records. Agreement at § 4.1.³

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within sixty (60) days after the entry of the court order approving the settlement. Agreement at § III(A)(3). No later than five (5) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the Aggrieved Employee Payment via First-Class U.S. Mail to the Aggrieved Employees' last known mailing address, Aggrieved Employee Payment. Agreement at § III(J)(4). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement at § III(J)(6) If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator shall cause the aggregate sum represented by those uncashed checks to be sent to the State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee who did not claim the funds. Agreement at *Id.* The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement at § III(J)(2).

///

///

³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 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 16,400. For example, if the total Pay Periods in the PAGA Period are 115% of 16,400, the Gross Settlement Amount shall increase by 5%. Agreement at § III(A)(2).

1 **D. Release of Claims**

2 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
3 California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in
4 the Agreement) from the Released PAGA Claims which include all PAGA claims that occurred
5 within the PAGA Period and that were alleged in the operative Complaint and Plaintiff's PAGA
6 notices to the LWDA, including former Plaintiff Luther Roddy's notice to the LWDA, regarding
7 Defendant, and expressly excluding all other claims, including claims for vested benefits, wrongful
8 termination, unemployment insurance, disability, social security, workers' compensation, and PAGA
9 claims outside of the PAGA Period. The release of claims for PAGA penalties shall bind only the
10 named Plaintiff, the LWDA, and the State of California. Agreement at §§ I(X); III(B).

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

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

1 settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed
2 Settlement.

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

4 The Gross Settlement Amount of \$625,000.00 is fair and reasonable and, therefore, should be
5 approved. Here, *without stacking* the PAGA penalties, Defendant's *maximum* liability exposure is
6 estimated at approximately \$1,640,000 in PAGA penalties (16,400 pay periods multiplied by \$100
7 per pay period⁴). JCL Dec., ¶ 22.

8 Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff's third-party
9 damages consultant estimated Defendant's maximum liability exposure at approximately
10 \$3,167,800. Plaintiff's consultant estimated Defendant's exposure as follows:

11 Claim	12 Penalty Amount ⁵	13 Number of Pay Periods w/ Violation	14 Violation Rate	15 Total Penalties
16 <i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	16,324	100% of PAGA Pay Periods	\$1,632,400
17 <i>Unpaid Wages Violations</i> Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$50	9,508	58% of PAGA Pay Periods	\$475,400
18 <i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	7,336	45.7% of PAGA Pay Periods	\$366,800
19 <i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	7,336	45.7% of PAGA Pay Periods	\$366,800
20 <i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	3,264	20% of PAGA Pay Periods	\$326,400

24
25
26 ⁴ California Labor Code section 2699(f)(2) provides the default penalty for PAGA violations of \$100 for initial violations and \$200 for subsequent violations.

27 ⁵ 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.
28

1 JCL Dec., ¶ 23.

2 **i. Estimated Penalties for Defendant’s Inaccurate Wage Statements**

3 Plaintiff’s primary claim alleged that Defendant failed to furnish its employees with accurate
4 itemized wage statements. Specifically, Plaintiff alleges that Defendant issued wage statements that
5 failed to accurately state the total hours worked by Aggrieved Employees in violation of California
6 Labor Code section 226(a)(2). As discussed below, Plaintiff contends that she and other Aggrieved
7 Employees are owed meal and rest period premiums. Thus, the wage statements are also inaccurate
8 because Defendant failed to provide meal and rest periods as required by the California Labor Code,
9 Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo*
10 *v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are “wages”
11 entitling employees to derivative wage statement penalties). JCL Dec., ¶ 24.

12 PAGA Counsel considered the arguable presence of various penalties and weighed the
13 potential recoveries against probable defenses. Specifically, Defendant argued that it substantially
14 complied with its obligation to provide the correct total of hours worked. Accordingly, Plaintiff
15 estimated that Defendant’s exposure from this claim was approximately \$1,632,400. JCL Dec., ¶ 25.

16 **ii. Estimated Liability for Unpaid Wages**

17 Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and
18 commissions when calculating the regular rate of pay when paying overtime wages, meal period
19 premiums, and sick pay. Specifically, Defendant paid Aggrieved Employees non-discretionary
20 incentive compensation in the form of “Bonus” and “Service Award” payments, which were not
21 properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and
22 redeemed sick pay. As a result of these miscalculations, Plaintiff and other Aggrieved Employees
23 are owed wages and waiting time penalties. JCL Dec., ¶ 26. The regular rate of pay, which can
24 change from pay period to pay period, includes adjustments to the straight time rate, reflecting,
25 among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value
26 of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of*
27 *California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a 50
28 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553. California law also requires

1 meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. *See*
2 *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

3 Conversely, Defendant denied liability and asserted that the additional compensation
4 identified by the expert were discretionary bonuses that did not need to be included in the regular
5 rate calculation. Thus, Plaintiff estimated Defendant's exposure for this claim was approximately
6 \$475,400. JCL Dec., ¶ 27.

7 **iii. Estimated Penalties for Meal Period Violations**

8 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
9 Plaintiff's expert found that recorded meal periods were late, short, or missed during approximately
10 45.7% of pay periods. Accordingly, Plaintiff alleges that she and other Aggrieved Employees are
11 owed meal period premiums for meal period violations that occurred during the PAGA Period.
12 Although the violation rate is high across the pay periods, Plaintiff's expert found rather low meal
13 period violations across all shifts in the pay period data. For example, late meal periods occurred
14 during approximately 1.1% of all shifts, missed meal periods occurred in approximately 0.2% of
15 shifts, and only in 7.0% of shifts were there short meal periods. JCL Dec., ¶ 28.

16 Conversely, Defendant argued that it had a legally compliant written meal period policy and
17 paid meal premiums during those shifts when meal period violations occurred. Further, Defendant
18 argued that Aggrieved Employees were instructed to take timely meal periods before the end of their
19 fifth (5th) hour of work and that those meal periods were to be at least thirty (30) minutes in length.
20 In light of Defendant's defenses, the low shift violation rates, and the payment of premiums, Plaintiff
21 estimated that Defendant's exposure for this claim was approximately \$366,800. JCL Dec., ¶ 29.

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

23 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
24 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Aggrieved Employees
25 were not able to take timely and duty-free rest periods. Further, Defendant did not pay a single
26 rest period premium during the PAGA Period. Because rest periods are not recorded, Plaintiff's
27 expert could not identify a violation rate. Plaintiff therefore made the reasonable assumption that
28

1 rest period violations were committed at a rate similar to that of meal period violations. JCL Dec.,
2 ¶ 30.

3 Based on an estimated violation rate which resulted in 7,336 of PAGA Pay Periods
4 containing a violation, Plaintiff contended that her claim for rest period violations was potentially
5 worth approximately \$366,800. This was calculated by multiplying the number of total pay periods
6 with a rest period violation (7,336) by a violation rate of \$50 dollars. The \$50 penalty rate was
7 used for a number of reasons in this instance. First, Defendant argued that increased civil penalties
8 for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor
9 Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein*
10 *v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163
11 Cal.App.4th 1157, 1209 [“Until the employer has been notified that it is violating a Labor Code
12 provision ... the employer cannot be presumed to be aware that its continuing underpayment of
13 employees is a ‘violation’ subject to penalties.”].) Separately, Defendant also argued that courts
14 have considerable discretion to reduce the penalty awards under PAGA. *See, e.g. Carrington v.*
15 *Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by
16 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty
17 amounts even if she prevailed in establishing the underlying Labor Code violations. Pursuant to
18 California Labor Code section 558(a)(1), an employer is subject to a penalty of \$50 for violations
19 of a Labor Code section regulating hours and days of work, including meal period and rest period
20 violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a
21 \$50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 31.

22 Defendant argued that it had a legally compliant written rest period policy. Defendant also
23 argued that Plaintiff’s rest break claim would have mainly relied on the testimony of Aggrieved
24 Employees, making it a riskier claim. Establishing liability likely would have entailed competing
25 testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g.,*
26 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the
27 competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal,
28 written rest break policy is insufficient for this Court to find that common issues predominate.”);

1 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8
2 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform
3 practices”). JCL Dec., ¶ 32.

4 **v. Estimated Liability for Unreimbursed Business Expenses**

5 Plaintiff alleged that Defendant required Plaintiff and other Aggrieved Employees to use their
6 personal cellular phones to communicate with Defendant’s supervisors. However, Defendant did not
7 reimburse Plaintiff and other Aggrieved Employees for these expenses. California employers who
8 require employees to incur personal business expenses for work purposes must reimburse the
9 employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that “an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
11 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
12 of the employer...”). JCL Dec., ¶ 33.

13 Defendant argued that it instructed its employees not to use their own cellular phones for work
14 purposes and had in place a written business expense reimbursement policy regarding the same.
15 Further, Defendant argued that even if employees did use their cellular phones for work purposes,
16 the number of affected employees was minimal and voluntary – not mandatory. Plaintiff’s expert
17 estimated that Defendant’s exposure for this claim was approximately \$326,400 in penalties. This
18 was calculated by multiplying the total number of pay periods by a violation rate of \$100 per pay
19 period. JCL Dec., ¶ 34.

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

21 In light of the above, the Gross Settlement Amount is approximately 19.73% of Defendant’s
22 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
23 of PAGA penalties through continued litigation. Defendant’s maximum exposure to PAGA penalties
24 is not a realistic outcome of the litigation because it fails to account for the risks of continued
25 litigation including, but not limited to, Defendant’s defenses. *See, Zayerz v. Kiewit Infrastructure*
26 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant
27 contended that Plaintiff’s PAGA claims could be and likely would be wiped out in the light of the
28

1 United States Supreme Court decision in *Viking River Cruises v. Moriana*, (2022) 142 S.Ct. 1906.
2 JCL Dec., ¶ 35.

3 In *Viking River*, the U.S. Supreme Court held that PAGA claims are preempted by the
4 Federal Arbitration Act, where, as here, arbitration agreements were signed by the employees. This
5 posed a very significant risk to Plaintiff's case, which was ultimately realized. See *Viking River*
6 *Cruises v. Moriana*, (2022) 142 S.Ct. 1906. Therefore, Plaintiff was mindful that this case could be
7 potentially wiped because of the U.S. Supreme Court's adverse decision. Plaintiff's claims are
8 arguably worthless in the post-*Viking River* world. JCL Dec., ¶ 36.

9 Second, Defendant argued that it can only be assessed civil penalties for actual violations of
10 the Labor Code. See Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff
11 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane*
12 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory
13 language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not
14 proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need
15 to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be
16 difficult to do, since Defendant deny any liability or wrongdoing of any kind associated with the
17 claims alleged in this action. JCL Dec., ¶ 37.

18 Thus, Defendant contended that Plaintiff would be required to "prove Labor Code violations
19 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
20 under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
21 2009). When "determining whether the employer committed Labor Code violations with respect to
22 each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
23 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 38.

24 Third, a ballot initiative to eliminate PAGA has qualified for the 2024 ballot.
25 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/)
26 [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
27 pursue civil penalties via a representative action. Plaintiff views this initiative as a significant
28

1 additional risk due to the potential limitation on their ability to recover penalties against Defendant
2 should litigation continue. JCL Dec., ¶ 39.

3 Finally, the maximum penalty figure does not consider that Courts have complete discretion
4 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
5 the facts and circumstances of the particular case, to do otherwise would result in an award that is
6 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
7 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
8 *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
10 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
11 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
12 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
13 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
14 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
15 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
16 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
17 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
18 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
19 *see also, Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-
20 5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San
21 Francisco Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum
22 PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is
23 reasonable in light of Defendant’s arguments. Further, the adverse decisions in *Viking River Cruises*
24 and *Wesson* pose very significant, and even fatal, risk to Plaintiff’s case. JCL Dec., ¶ 40.

25 Defendant’s substantial compliance could also operate to prevent the imposition of PAGA
26 penalties. JCL Dec., ¶ 41. A corollary of PAGA being an enforcement action is that “substantial
27 compliance with statutory directives will suffice if the purpose of the statute is thereby
28 satisfied.” *Downtown Palo Alto v. City Council*, 180 Cal.App.3d 384, 395 (1986) (emphasis

1 supplied); *see also Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 WL 12272348, at *8 (C.D. Cal.
2 Apr. 12, 2012), *aff'd*, 554 F. App'x 661 (9th Cir. 2014) (granting defendant's motion for summary
3 judgment based on defendant's "substantial compliance" with Labor Code section 226). In this
4 regard, "[t]he paramount consideration is the objective of the statute." *Id.* "Where there is
5 compliance as to all matters of substance[,] technical deviations are not to be given the stature of
6 noncompliance." *Cal-Air Conditioning v. Auburn Union School Dist.*, 21 Cal.App.4th 655, 668
7 (1993) (emphasis supplied). "Unless the intent of a statute can only be served by demanding strict
8 compliance with its terms, substantial compliance is the governing test." *County of Tulare v.*
9 *Campbell*, 50 Cal. App. 4th 847, 853 (1996) (emphasis supplied).

10 Given Defendant's defenses to the claimed Labor Code violations at issue, the risks and costs
11 of continued litigation, and Defendant's financial condition, Plaintiff and PAGA Counsel believe
12 that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by
13 experienced counsel at arm's length. JCL Dec., ¶ 42. The LWDA has been provided with notice of
14 this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement
15 and not oppose the motion should be given considerable weight. Moreover, the LWDA is a
16 sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 5, 43.

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

18 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
19 2699(1) does not require that a court approve any other elements of the proposed settlement.
20 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
21 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
22 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
23 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
24 JCL Dec., ¶ 44.

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

26 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
27 the amount of \$233,333.33 (one-third of the Gross Settlement Amount) and reimbursement of
28

1 litigation costs not to exceed \$25,000.⁶ PAGA does not have any requirements for reviewing
2 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
3 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
4 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
5 and hour counsel. JCL Dec., ¶ 45.

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

7 The requested PAGA Counsel Award of \$233,333.33, comprised of \$208,333.33 for
8 attorneys' fees and reimbursement of litigation expenses of up to \$25,000 is fair, reasonable, and
9 justified by the result achieved. Agreement at § III(J)(9); JCL Dec., ¶ 46. PAGA Counsel
10 negotiated a recovery of Six Hundred, Twenty Five Thousand Dollars and Zero Cents
11 (\$625,000.00), and this result justifies the requested fees equal to one third of this recovery. This
12 percentage is within the standard contingent recovery percentage of one-third, and this percentage is
13 what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
14 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's
15 defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA
16 Counsel to overcome. Here, several defenses asserted by Defendant present serious threats to the
17 claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices
18 complied with all applicable labor laws. If successful, Defendant's factual and legal defenses would
19 eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses
20 could be overcome, Defendant maintains that these defenses have merit and therefore present a
21 serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA
22 Counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would
23 prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to
24 monetary relief. JCL Dec., ¶ 47.

25 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
26 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
27

28 ⁶ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$22,695.28 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

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

11 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
12 Counsels' current combined loadstar is \$200,787.00. JCL Dec., ¶¶ 6, 54-58; Declaration of Shani
13 Zakay ("Zakay Dec.") at ¶¶ 3-5; Declaration of David Bibiyan ("Bibiyan Dec.") ¶ 23. Thus, PAGA
14 Counsels' fee request is equal to PAGA Counsel's loadstar with a negligible multiplier of 1.03 –
15 well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier
16 range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202
17 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier
18 of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D.
19 Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

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

22 Attorneys who create a common fund for the benefit of a class are entitled to payment from
23 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
24 counsel's incurred expenses because those who benefit from their effort should share in the cost.
25 See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
26 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
27 paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also
28 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded

litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$22,695.28 prosecuting this action (JCL Law Firm, APC - \$9,591.89, Zakay Law Group, APLC - \$10,694.15; and Bibiyan Law Group, P.C. - \$2,409.24). JCL Dec. ¶¶ 7, 59; Zakay Dec., ¶¶ 6-7; Bibiyan Dec. ¶ 21. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation 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. ¶¶ 7, 60.

VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE

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

The Settlement provides for a Service Award of \$10,000 for Plaintiff. The Service Award payment is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the status of her case and the strategies for prosecuting the claims and agreeing to provide Defendant a broad general release of all claims arising out of her employment. Plaintiff willingly came forward to protect and advance the rights of the Aggrieved Employees on important legal disputes affecting

1 California employees. By way of example, Plaintiff assumed the serious risk of liability for
2 Defendant's costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff
3 knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved Employees.
4 JCL Dec., ¶ 61.

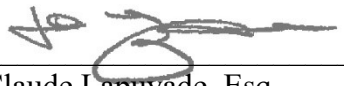
5 Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to 363 Aggrieved
6 Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve the
7 Service Award in accordance with the Settlement Agreement. Plaintiff and PAGA Counsel also
8 respectfully request approval of the requested Service Award in the amount of \$10,000.00 to
9 Plaintiff. JCL Dec., ¶ 62.

10 **VII. CONCLUSION**

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

14
15 Dated: May 6, 2024

JCL LAW FIRM, APC

16
17 By: 
18 Jean-Claude Lapuyade, Esq.
19 Attorney for Plaintiff
20
21
22
23
24
25
26
27
28