

1 TYLER D. KRING (SBN 325588)
2 **KRING & CHUNG LLP**

3 38 Corporate Park,
4 Irvine, California 92606
5 Telephone: (949) 261-7700
6 Facsimile: (949) 261-8800

7 Attorneys for Plaintiff Alex Gonzalez

8 [Additional Counsel Listed on Next Page]

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

11 NORMA REYES, ALEX GONZALEZ, and
12 RAMON MAURICIO PEREZ, individuals, on
13 behalf of themselves and on behalf of all persons
14 similarly situated,

15 Plaintiffs,

16 v.

17 IMPERIAL IMPORTS, INC., a California
18 corporation; and DOES 1 through 100, inclusive,

19 Defendants.

) Lead Case No. CIVSB2304458
) Consolidated Case Nos. CIVSB2320530,
) CIVSB2302772, & CIVSB2313163
)

) Date: May 10, 2024
) Time: 8:30 AM
) Dept: S-26
)

) **PLAINTIFFS' UNOPPOSED MOTION**
) **FOR APPROVAL OF PAGA**
) **SETTLEMENT; FEES, COSTS,**
) **ADMINISTRATION EXPENSES, AND**
) **ENHANCEMENT; MEMORANDUM OF**
) **POINTS AND AUTHORITIES**
)

) Judge: Hon. Jessica Morgan
) Dept: S-26
)

) Complaint Filed: February 9, 2023
) Trial Date: None Set



1 JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
2 Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
3 5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
4 Telephone: (619) 599-8292
Facsimile: (619) 599-8291
5 jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
6 prazma@jcl-lawfirm.com

7 Attorneys for Plaintiff
NORMA REYES
8

9 ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
10 5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
11 Telephone: (619) 255-9047
Facsimile: (858) 404-9203
12 shani@zakaylaw.com

13 Attorneys for Plaintiff
NORMA REYES
14

15 DAVID D. BIBIYAN (SBN 287811)
BIBIYAN LAW GROUP, P.C.
16 8484 Wilshire Blvd, Ste. 500,
Beverly Hills, California 90211
17 Telephone: (310) 438-5555
Facsimile: (310) 300-1705
18

19 Attorneys for Plaintiff Ramon Mauricio Perez
20
21
22
23
24
25
26
27
28



TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	9
II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND.....	10
A. Plaintiffs' Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant	10
1. The Gonzalez Action	10
2. The Reyes Action	10
3. The Perez Action	11
III. TERMS OF THE SETTLEMENT	13
A. The Gross Settlement Amount.....	13
B. Allocation of Individual Settlement Payments	14
C. Funding and Distribution	14
D. Release of Claims	15
IV. THE COURT SHOULD APPROVE THE SETTLEMENT	16
A. The Gross Settlement Amount is Fair and Reasonable	16
1. Estimated Penalties for Defendants' Inaccurate Wage Statements.....	17
2. Estimated Penalties for Meal Period Violations	18
3. Estimated Liability for Miscalculation of Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay	18
B. The Gross Settlement Compares Favorably to The Likely Recovery	18
C. The Remaining Settlement Terms Are Fair and Reasonable.....	21
V. THE ATTORNEYS' FEES AND ATTORNEYS' COSTS PAYMENTS ARE FAIR AND REASONABLE	22
A. The Requested Attorneys' Fee is Fair and Reasonable	22
B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	23
VI. PLAINTIFFS' ENHANCEMENT AWARDS ARE FAIR AND REASONABLE	24
VII. CONCLUSION.....	25



TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Bell v. Farmers Ins. Exch.</i> , (2004) 115 Cal. App. 4th 715	24
<i>Cal-Air Conditioning v. Auburn Union School Dist.</i> , (1993) 21 Cal. App. 4th 655	20
<i>Carrington v. Starbucks Corp.</i> , (2018) 30 Cal. App. 5th 504	20
<i>Clark v. American Residential Services, LLC</i> , (2009) 175 Cal. App. 4th 785	25
<i>Downtown Palo Alto v. City Council</i> , (1986) 180 Cal. App. 3d 384.....	20
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	16
<i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal. 5th 858	17
<i>Gola v. University of San Francisco</i> , San Francisco Superior Court Case No. CGC- 18-5655018	20
<i>Iskanian v. CLS Transportation</i> , (2014) 59 Cal. 4th 348	9
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> , (2018) 29 Cal. App. 5th 778	20
<i>Kim v. Reins International California, Inc.</i> (2020) 9 Cal. 5th 73.....	16
<i>Laffitte v. Robert Half Intern., Inc.</i> , (2016) 1 Cal. 5th 506.....	23
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal. App. 5th 56	16
<i>Pellegrino v. Robert Half Intern., Inc.</i> , (2010) 182 Cal. App. 4th 278.....	23
<i>Rider v. City of San Diego</i> , (1992) 11 Cal. App. 4th 1410	24
<i>Wershba v. Apple Computer, Inc.</i> , (2001) 91 Cal. App. 4th 224.....	23
<i>Wesson v. Staples the Off. Superstore</i> , (2021) 68 Cal. App. 5th 746	19
<i>Williams v. Superior Court</i> (2017) 3 Cal. 5th 531.....	16
<i>ZB, N.A. v. Superior Court</i> , (2019) 8 Cal. 5th 175	9, 14

Federal Cases

<i>Bernstein v. Virgin America, Inc.</i> (2021) 3 F.4th 1127	17
<i>Boyd v. Bank of America</i> , (2014) WL 6473804, at *11 (C.D. Cal. 2014).....	23
<i>Cardenas v. McLane Foodservice, Inc.</i> , (2011) U.S. Dist. LEXIS 13126, *10	19
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i> , (2017) U.S. Dist. LEXIS 27249.....	23



TABLE OF AUTHORITIES (cont.)

Page(s)

<i>Fleming v. Covidien, Inc.</i> , (2011) WL 7563047, *4 (C.D. Cal. 2011)	20
<i>Harris v. Marhoefer</i> , 24 F.3d 16, 19 (9th Cir. 1994)	24
<i>Hartless v. Clorox Co.</i> , 273 F.R.D. at 645-46	24
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> , (2012) WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), aff'd, 554 F. App'x 661 (9th Cir. 2014)	20
<i>Hibbs-Rines v. Seagate Technologies</i> , 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009)	19
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013)	23
<i>Rodriguez v. West Publ'g Corp.</i> , 563 F.3d 948, 958-59 (9th Cir. 2009)	24
<i>Taylor v. FedEx Freight, Inc.</i> , 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	23
<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)	23
<i>Zayerz v. Kiewit Infrastructure West</i> , 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018)	19

Statutes

Cal. Bus. & Prof. Code § 16600	15
Cal. Bus. & Prof. Code § 16700	15
Cal. Bus. & Prof. Code § 17200	11, 15
Cal. Code Civil Proc. § 382	21
Cal. Government Code § 12952	15
Cal. Lab Code § 96	15
Cal. Lab. Code § 98.6	15
Cal. Lab. Code § 201	11, 15
Cal. Lab. Code § 201.3	15
Cal. Lab. Code § 202	11, 15
Cal. Lab. Code § 203	11, 12, 15
Cal. Lab. Code § 204	15
Cal. Lab. Code § 210	15



TABLE OF AUTHORITIES (cont.)

Page(s)

1		
2		
3	Cal. Lab. Code § 212	15
4	Cal. Lab. Code § 213	15
5	Cal. Lab. Code § 218.5	15
6	Cal. Lab. Code § 218.6	15
7	Cal. Lab. Code § 221	15
8	Cal. Lab. Code § 223	15
9	Cal. Lab. Code § 224	15
10	Cal. Lab. Code § 226	11, 12, 15, 20
11	Cal. Lab. Code § 226.2	15
12	Cal. Lab. Code § 226.3	15
13	Cal. Lab. Code § 226.7	11, 15
14	Cal. Lab. Code § 227.3	12, 15
15	Cal. Lab. Code § 232	15
16	Cal. Lab. Code § 232.5	15
17	Cal. Lab. Code § 233	15
18	Cal. Lab. Code § 245	12, 15
19	Cal. Lab. Code § 246	15
20	Cal. Lab. Code § 246.5	15
21	Cal. Lab. Code § 247	15
22	Cal. Lab. Code § 248.2	15
23	Cal. Lab. Code § 248.5	15
24	Cal. Lab. Code § 432	15
25	Cal. Lab. Code § 432.3	15
26	Cal. Lab. Code § 432.5	15
27	Cal. Lab. Code § 432.6	15
28	Cal. Lab. Code § 432.7	15



TABLE OF AUTHORITIES (cont.)

Page(s)

1		
2		
3	Cal. Lab. Code § 432.8	15
4	Cal. Lab. Code § 510	11, 15
5	Cal. Lab. Code § 512	11, 15
6	Cal. Lab. Code § 558	15
7	Cal. Lab. Code § 1102.5	15
8	Cal. Lab. Code § 1174	15
9	Cal. Lab. Code § 1174(d)	15
10	Cal. Lab. Code § 1174.5	15
11	Cal. Lab. Code § 1175	15
12	Cal. Lab. Code § 1182.12	15
13	Cal. Lab. Code § 1194	11, 15
14	Cal. Lab. Code § 1194.14	15
15	Cal. Lab. Code § 1194.2	15
16	Cal. Lab. Code § 1197	11, 15
17	Cal. Lab. Code § 1197.1	11, 15
18	Cal. Lab. Code § 1197.5	15
19	Cal. Lab. Code § 1198	15
20	Cal. Lab. Code § 1198.5	15
21	Cal. Lab. Code § 1199	15
22	Cal. Lab. Code § 1527	15
23	Cal. Lab. Code § 2699	14, 15
24	Cal. Lab. Code § 2699(1)	21
25	Cal. Lab. Code § 2699(e)(2)	20
26	Cal. Lab. Code § 2699(f)(2)	19
27	Cal. Lab. Code § 2699(g)(1)	9
28	Cal. Lab. Code § 2699(l)(2)	13, 16



TABLE OF AUTHORITIES (cont.)

Page(s)

Cal. Lab. Code § 2699.3(a)(2)(A).....	11, 12
Cal. Lab. Code § 2751	15
Cal. Lab. Code § 2802	11, 12, 15
Cal. Lab. Code § 2804	15
Cal. Lab. Code § 2810.5	12, 15
Cal. Lab. Code § 3366	15
Cal. Lab. Code § 3457	15
Cal. Lab. Code § 6409.6	15
Cal. Lab. Code § 8397.4	15

Regulations

Cal. Code Regs, title 8, section I1040(5)(A)	15
--	----



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Alex Gonzalez (“Plaintiff Gonzalez”), Norma Reyes (“Plaintiff Reyes”), and
4 Ramon Mauricio Perez (“Plaintiff Perez”) (collectively, “Plaintiffs”) seek approval of the
5 Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief
6 for approximately 600 “Aggrieved Employees,” defined as all current and former non-exempt
7 employees and current and former employees classified as exempt paid, on a guaranteed draw or
8 draw basis, that worked for Defendant Imperial Imports, Inc. (“Defendant Imperial) and Defendant
9 San Bernardino Motors, Inc. (“Defendant SB Motors”) (collectively, “Defendants”) in California
10 any time from November 18, 2021 through October 31, 2023 (“PAGA Period”). Agreement at
11 §(I)(2); (I)(3); (I)(11). This is only a settlement of the PAGA claim for civil penalties and is not a
12 class settlement and does not release the individual wage claims, if any, of the affected employees
13 other than Plaintiffs themselves. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59
14 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are
15 not recoverable under PAGA).

16 If approved, the Aggrieved Employees and the California Labor Workforce and
17 Development Agency (“LWDA”) will share in a Gross Settlement Amount of Three Hundred
18 Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00). Agreement at § (I)(8). The Net
19 Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees
20 (“Individual Settlement Payments”), after the following amounts (subject to Court approval) are
21 subtracted from the Gross Settlement Amount: (a) Attorneys’ Fees of up to forty percent (40%) of
22 the Gross Settlement Amount, currently estimated at \$130,000; (b) Plaintiffs’ reasonable verified
23 litigation costs of up to \$25,000.00; (c) Plaintiffs’ Enhancement Awards of \$15,000.00, with
24 \$5,000.00 allocated to each named Plaintiff; and (d) reasonable third-party administration costs up
25 to \$15,000.00. Agreement at §§ I(9).

26 _____
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Tyler D. Kring in Support of Plaintiffs’
28 Motion for Approval of PAGA Settlement (“Kring Dec.”) at ¶ 3. All citations to the Agreement
incorporate by this reference a citation to the Kring Dec., ¶ 3. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.



1 An objective evaluation of the proposed settlement confirms that the relief negotiated on
2 behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The
3 Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations
4 between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for
5 PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this
6 Court grant approval of the Agreement. Declaration of Tyler D. Kring (“Kring Dec.”) at ¶ 4.

7 **II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

8 **A. Plaintiffs’ Exhaustion of Administrative Remedies Under PAGA And Civil**
9 **Action Against Defendant**

10 **1. The Gonzalez Action**

11 On November 18, 2022, Plaintiff Gonzalez, on behalf of himself and on behalf of other
12 Aggrieved Employees, served Defendants and the LWDA with a Notice of Violations (“PAGA
13 Notice”) memorializing claims against Defendants for alleged violations of the California Labor
14 Code. On August 24, 2023, Plaintiff Gonzalez filed a representative action complaint against
15 Defendants in the Superior Court for San Bernardino, Case Number CIVSB2320530 (“Gonzalez
16 Action”) alleging a cause of action for violations of PAGA, including failure to pay minimum and
17 overtime wages, failure to timely pay wages, unlawful deductions and chargebacks, failure to
18 provide compliant written commission agreements, failure to provide compliant notices to
19 employees, failure to provide meal and rest periods or wage premiums in lieu thereof, failure to
20 maintain accurate records, failure to provide accurate itemized wages statements, and failure to pay
21 all wages due and payable upon separation of employment. On August 25, 2023, Plaintiff Gonzalez
22 filed an Amended PAGA Notice with the LWDA to allege additional Labor Code violations for
23 failure to reimburse business expenses, failure to provide 2022 COVID-19 supplemental paid sick
24 leave and notice thereof, violations of paid sick leave law, violations of provisions regulating hours and
25 days of work, and the applicable industrial welfare commission wage order(s). Kring Dec. at ¶ 2.

26 **2. The Reyes Action**

27 On February 7, 2023, Plaintiff Reyes, on behalf of herself and on behalf of other Aggrieved
28 Employees served Defendant Imperial and the LWDA with a PAGA Notice and draft complaint



1 memorializing claims against Defendant Imperial for alleged violations of the California Labor
2 Code, including causes of action for unfair competition, failure to provide compliant meal and rest
3 periods; failure to accurately compensate for missed meal and rest periods; failure to pay all
4 minimum, regular, and overtime wages; failure to reimburse for required business expenses; failure
5 to provide accurate itemized wage statements; and failure to timely pay wages due during, and
6 upon termination of employment (LWDA Case No. LWDA-CM-934475-23.) Kring Dec. ¶ 2.

7 On February 9, 2023, Plaintiff Reyes filed a class action complaint against Defendant
8 Imperial in the Superior Court for San Bernardino, Case Number CIVSB2304458 (“Reyes
9 Action”), alleging eight causes of action against Defendant Imperial for: (1) Unfair Competition in
10 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay Overtime Wages in
11 violation of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure to Pay Minimum Wages in violation of Cal.
12 Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required Meal Periods in violation of Cal.
13 Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required
14 Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
15 (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7)
16 Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; and (8)
17 Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802.

18 The 65-day “waiting period” on Plaintiff Reyes’ right to file a civil action under PAGA, *see* Cal.
19 Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff Reyes that they intended to
20 investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff Reyes of
21 any intent to take action with respect to the claims in the PAGA Notice. Kring Dec. ¶ 2.

22 On May 5, 2023, Plaintiff Reyes filed a first amended class action complaint against
23 Defendant Imperial, adding a ninth cause of action for violations of PAGA. Kring Dec. ¶ 2.

24 On June 8, 2023, Plaintiff Reyes dismissed the class action allegations without prejudice
25 and proceeded with a single cause of action for PAGA. Kring Dec. ¶ 2.

26 **3. The Perez Action**

27 On March 31, 2023, Plaintiff Perez, on behalf of himself and on behalf of other Aggrieved
28 Employees, served Defendant Imperial with a PAGA Notice memorializing claims against



1 Defendant Imperial for alleged violations of the California Labor Code. Kring Dec. ¶ 2.

2 On April 7, 2023, Plaintiff Perez filed a class action complaint against Defendant Imperial
3 in the Superior Court for San Bernardino, Case Number CIVSB2302772, alleging ten causes of
4 action against Defendant Imperial for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay
5 Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)
6 Waiting Time Penalties; (6) Wage Statement Violations; (7) Failure to Timely Pay Wages; (8) Failure
7 to Indemnify; (9) Violation of Labor Code § 227.3; and (10) Unfair Competition. Kring Dec. ¶ 2.

8 The 65-day “waiting period” on Plaintiff Perez’s right to file a civil action under PAGA, *see* Cal.
9 Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff Perez that they intended to
10 investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff Perez of any
11 intent to take action with respect to the claims in the PAGA Notice. Kring Dec. ¶ 2.

12 On June 9, 2023, Plaintiff Perez filed a representative action complaint against Defendants
13 in the Superior Court for San Bernardino, Case Number CIVSB2313163 (“Perez Action”) alleging
14 one cause of action for Violations of PAGA, including for failure to comply with Labor Code
15 sections 2810.5, 203, 226, 227.3, 245, et seq., and 2802, restraints on competition, whistleblowing
16 and freedom of speech. Kring Dec. ¶ 2.

17 On March 5, 2024, the Gonzalez Action, Reyes Action, and Perez Action were consolidated
18 for purposes of a consolidated PAGA settlement, with the Reyes Action deemed the lead case. The
19 consolidated actions are hereafter referred to as the “Action”. Kring Dec. ¶ 2.

20 On September 19, 2023, the Parties participated in an all-day mediation presided over by
21 Marisa Ratinoff, Esq., and ultimately reached a tentative global settlement to fully resolve all
22 PAGA claims asserted in the Action as to Plaintiffs and the Aggrieved Employees. In advance of
23 the mediation, Defendants provided Plaintiffs with sufficient information to properly evaluate
24 Defendants’ potential liability exposure, including time and payroll data. Kring Dec. ¶¶ 3-4.

25 The Parties subsequently executed a binding and enforceable Memorandum of
26 Understanding (“MOU”). After reaching an agreement in the principle, the Parties drafted and
27 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
28 negotiated in light of all known facts and circumstances and the uncertainty associated with



1 litigation – including the risk of Plaintiffs not being able to maintain representative claims and
2 establishing manageability, the difficulty of proving Plaintiffs’ claims in a manageable trial, the
3 merits of Defendants’ potential defenses, and the significant delay and potential appellate issues
4 inherent to litigation – and was reached after extensive arm’s length negotiations, with the
5 assistance of Mediator Ratinoff. Kring Dec. ¶ 4.

6 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
7 by Plaintiffs on behalf of themselves, the Aggrieved Employees, and State of California. This is
8 only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does not
9 release the individual claims, if any, of the Aggrieved Employees. This Settlement does not release
10 any claim that is not a PAGA claim.² Nor does this Settlement waive Defendants’ right to assert *res*
11 *judicata* or other available defense to any asserted claim or lawsuit. Kring Dec. ¶ 5.

12 Pursuant to Cal. Lab. Code § 2699(l)(2), Plaintiffs are providing a copy of the Agreement
13 and this motion to the LWDA concurrently with the filing of the instant motion for settlement
14 approval as set forth in the accompanying proof of service. Additionally, Plaintiffs will submit to
15 the LWDA a copy of the Court’s judgment and order approving the Agreement within ten (10)
16 days after entry of judgment or order. Kring Dec. ¶ 6.

17 **III. TERMS OF THE SETTLEMENT**

18 **A. The Gross Settlement Amount**

19 The Settlement is subject to Court approval consistent with Cal. Lab. Code § 2699(1)(2).
20 The Settlement negotiated by the Parties provides for a Gross Settlement Amount payment in the
21 amount of Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00) to resolve
22 the PAGA claims. From the Gross Settlement Amount, there is a deduction of Attorneys’ Fees in
23 the amount of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) (which is 40%
24 of the Gross Settlement Amount), Attorneys’ Costs in an amount not to exceed Twenty-Five
25 Thousand Dollars and Zero Cents (\$25,000.00), Plaintiffs’ Enhancement Awards of \$15,000.00,
26

27
28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”



1 with \$5,000.00 allocated to each named Plaintiff, and payment to the Settlement Administrator for
2 Administration Costs which will not exceed Fifteen Thousand Dollars and Zero Cents
3 (\$15,000.00). Agreement at §(I)(8). After these deductions, the amount remaining is the “Net
4 Settlement Amount,” which is estimated to be \$140,000.00. Kring Dec. ¶ 7.

5 The Gross Settlement Amount will be used to satisfy the Individual Settlement Payments,
6 the payment to the LWDA, Attorneys’ Fees, Attorneys’ Costs, Administration Costs, and
7 Plaintiffs’ Enhancement Awards. Agreement generally at § (III)(4).

8 Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA and
9 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Individual
10 Settlement Payments”). Agreement at §§ 1.23, 3.2.4. This 75/25 allocation is required by Cal. Lab.
11 Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

12 **B. Allocation of Individual Settlement Payments**

13 The Individual Settlement Payments will be calculated by dividing the amount of the Aggrieved
14 Employees’ 25% share of the Net Settlement Amount (\$35,000.00) by the total number of PAGA Pay
15 Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result
16 by each Aggrieved Employee’s PAGA Pay Periods. Agreement at § 3.2.4. The PAGA Period is the
17 period between November 18, 2021, through October 31, 2023. Agreement at § 1.20.

18 At the time of the Parties’ settlement this action, Defendants estimated that there were
19 approximately 600 Aggrieved Employees who worked approximately 12,831 pay periods during
20 the PAGA Period based on company records. Agreement at § 4.1.³

21 **C. Funding and Distribution**

22 Provided that an order approving this Settlement is entered by the Court, Defendants shall
23 fully fund the Gross Settlement Amount to the Settlement Administrator no later than thirty (30)
24 days after the entry of the court order approving the Settlement. Agreement at (IV)(2). No later
25 than ten (10) business days after Defendants fully fund the Gross Settlement Amount, Defendants
26 _____

27 ³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
28 10% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for
the number of Pay Periods over 110% of 12,831. For example, if the total Pay Periods increase by 11%, the Gross
Settlement Amount shall increase by 1%. Agreement at § (III)(3).



1 shall provide the Settlement Administrator with a list of all Aggrieved Employees, including their
2 full name, last known mailing address, last known telephone number, pay period information, and
3 Social Security Numbers. *Id.* Within ten (10) business days of receiving the Aggrieved
4 Employees' information from Defendants, the Settlement Administrator will circulate to counsel
5 for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each
6 Aggrieved Employee. *Id.* No later than ten (10) business days after PAGA Counsel approves the
7 Settlement Administrator's calculations of the Individual Settlement Payments, the Settlement
8 Administrator will mail the Individual Settlement Payments to the Aggrieved Employees via First-
9 Class U.S. Mail, the payment to the LWDA, the Administration Costs, Attorneys' Fees, and
10 Attorneys' Costs. Agreement at § (IV)(3). Settlement checks issued to Aggrieved Employees will
11 expire one hundred eighty (180) days from the date they are issued by the Settlement
12 Administrator. *Id.* Any check that is not negotiated within one hundred eighty (180) days of
13 mailing to an Aggrieved Employee will be transferred to State Controller's Office, Unclaimed
14 Property Fund, to be held in trust in the name of the Aggrieved Employee. *Id.* The Individual
15 Settlement Payments are 100% penalties and shall be reported using IRS Form 1099s. *Id.*

16 **D. Release of Claims**

17 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
18 California, the Aggrieved Employees, and Plaintiffs shall release Defendants from the Released
19 PAGA Claims, which include any and all claims asserted in the Action under PAGA, or that could
20 have been asserted in the Action under PAGA based on the facts alleged, including but not limited
21 to any and all claims for PAGA penalties for violations of the California Labor Code governing:
22 Labor Code sections 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 218.5, 218.6, 221, 223,
23 224, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 245 et seq., 246, 246.5, 247, 248.2, 248.5,
24 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 558, 1102.5, 1174, 1174(d), 1174.5, 1175,
25 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1197.14, 1198, 1198.5, 1199, 1527, 2699, 2751,
26 2802, 2804, 2810.5, 3366, 3457, 6409.6, and 8397.4, Cal. Code Regs, title 8, section I1040(5)(A),
27 and all applicable IWC Wage Orders, Business and Professions Code sections 17200, 16600, and
28 16700, and Government Code § 12952. The PAGA Released Claims exclude any and all individual



wage and hour claims, as well as any claims under the Fair Employment and Housing Act, the California Family Rights Act, discrimination, retaliation, harassment, wrongful termination in violation of public policy, intentional infliction of emotional distress, and related claims. Agreement at § (I)(12).

IV. THE COURT SHOULD APPROVE THE SETTLEMENT

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

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$325,000.00 is fair and reasonable and, therefore, should be approved. Kring Dec. ¶¶ 7-8. Here, *without stacking* the PAGA penalties, Defendants’ *maximum* liability based solely on Plaintiffs’ alleged violations tied to timekeeping and payroll data provided by Defendant is estimated at approximately \$1,283,100 in PAGA penalties (12,831 pay



periods multiplied by \$100 per pay period⁴). Kring Dec. ¶ 8. Assuming the Court permitted Plaintiffs to stack PAGA penalties, Plaintiffs' third-party damages consultant estimated Defendants' maximum liability exposure at approximately \$1,528,000.00. Plaintiff's consultant estimated Defendants' exposure as follows:

Claim	Penalty Amount ⁵	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	9,134	71.2% of PAGA Pay Periods	\$913,400
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	9,134	71.2% of PAGA Pay Periods	\$456,700
<i>Miscalculated Regular Rate of Pay for Purposes of Meal Premiums</i> Cal. Labor Code §§ 226.7 and 512	\$100	1,579	12.3% of PAGA Pay Periods	\$157,900

Kring Dec. ¶ 8.

1. Estimated Penalties for Defendants' Inaccurate Wage Statements

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, the wage statements issued by Defendants failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiffs estimated the damages for this claim at \$913,400. This number was calculated by multiplying the number of total pay periods where there was a wage statement violation by a violation rate of \$100. Kring Dec. ¶ 9.

Defendants denied liability for this claim and argued that they substantially complied with their obligation to provide accurate itemized wage statements to employees. Further, Defendants argued that even if they failed to furnish accurate wage statements, Plaintiffs could not establish the injury requirement on a class-wide basis. Kring Dec. ¶ 10.

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.

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.



1 **2. Estimated Penalties for Meal Period Violations**

2 Plaintiffs allege that Defendants failed to provide compliant meal periods to Plaintiffs and
3 other Aggrieved Employees. Based upon review of time and payroll records, Plaintiffs' expert
4 found that meal period violations occurred during approximately 71.2% of PAGA Pay Periods.
5 Plaintiffs estimated the damages for this claim at \$456,700. This number was calculated by
6 multiplying the number of total pay periods where there was a meal period violation by a violation
7 rate of \$50. Kring Dec. ¶ 9.

8 Conversely, Defendants argued that they maintained compliant meal period policies and
9 practices throughout the PAGA Period. Thus, Defendants argued that there was no potential
10 liability for Plaintiffs' alleged meal period violations. Kring Dec. ¶ 10.

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

13 Plaintiffs also alleged that Defendants failed to pay meal period premiums at the regular
14 rate of pay in violation of *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.
15 Specifically, Plaintiffs and Aggrieved Employees earned non-discretionary bonus compensation
16 that was not included in the regular rate calculation for purposes of overtime compensation, meal
17 period premiums, and redeemed sick pay. Defendants denied liability and asserted it paid the
18 correct rate of pay for purposes of overtime wages, meal premiums, and sick pay. Defendants also
19 argued that these bonuses were discretionary and did not need to be included in the regular rate
20 calculation for payment of overtime wages, meal premiums, and sick pay. Plaintiffs' expert found
21 meal premium violations in 12.3% of PAGA Pay Periods. Plaintiffs estimated the damages for this
22 claim at \$157,900. This number was calculated by multiplying the number of total pay periods
23 where there was a meal premium violation by a violation rate of \$100. The \$100 penalty rate was
24 used for the same reasons as stated above. Kring Dec. ¶¶ 9-10.

25 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

26 In light of the above, the Gross Settlement Amount is approximately 25.3% of Defendants'
27 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely
28 recovery of PAGA penalties through continued litigation. Kring Dec. ¶ 11.



1 Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the
2 litigation because it fails to account for the risks of continued litigation including, but not limited
3 to, Defendant's defenses. *See, Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918,
4 *14 (C.D. Cal. January 18, 2018).

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

14 Thus, Defendants contended that Plaintiffs would be required to "prove Labor Code
15 violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil
16 penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal.
17 Mar. 2, 2009). When "determining whether the employer committed Labor Code violations with
18 respect to each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the*
19 *Off. Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). Kring Dec. ¶ 12.

20 Third, a ballot initiative to eliminate PAGA has qualified for the 2024 ballot.
21 See [https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-](https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-2024-ballot/)
22 [for-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
23 to pursue civil penalties via a representative action. Plaintiffs view this initiative as a significant
24 additional risk due to the potential limitation on their ability to recover penalties against Defendants
25 should litigation continue. Kring Dec. ¶ 13.

26 Finally, the maximum penalty figure does not consider that Courts have complete discretion
27 to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based
28 on the facts and circumstances of the particular case, to do otherwise would result in an award that



1 is unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
2 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
3 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
4 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
5 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
6 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th
7 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its
8 discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because]
9 [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v.*
10 *Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the
11 maximum amount of PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to
12 \$500,000 because the employees suffered no injuries as a result of the erroneous wage statements
13 and made no complaints about the errors or omissions in the wage statements, thus reducing the
14 maximum penalty by 82%); *see also, Gola v. University of San Francisco*, San Francisco Superior
15 Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge
16 Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial that a penalty of
17 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by
18 PAGA Counsel is reasonable in light of Defendants’ arguments. Kring Dec. ¶¶ 4, 7-8, 13.

19 Defendants’ substantial compliance could also operate to prevent the imposition of PAGA
20 penalties. Kring Dec. ¶ 12. A corollary of PAGA being an enforcement action is that “substantial
21 compliance with statutory directives will suffice if the purpose of the statute is thereby
22 satisfied.” *Downtown Palo Alto v. City Council*, 180 Cal.App.3d 384, 395 (1986) (emphasis
23 supplied); *see also Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 WL 12272348, at *8 (C.D.
24 Cal. Apr. 12, 2012), *aff’d*, 554 F. App’x 661 (9th Cir. 2014) (granting defendant’s motion for
25 summary judgment based on defendant’s “substantial compliance” with Cal. Lab. Code § 226). In
26 this regard, “[t]he paramount consideration is the objective of the statute.” *Id.* “Where there is
27 compliance as to all matters of substance[,] technical deviations are not to be given the stature of
28 noncompliance.” *Cal-Air Condition v. Auburn Union School Dist.*, 21 Cal.App.4th 655, 668 (1993)



(emphasis supplied). “Unless the intent of a statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test.” *County of Tulare v. Campbell*, 50 Cal. App. 4th 847, 853 (1996) (emphasis supplied).

Given Defendants’ defenses to the claimed Labor Code violations at issue and the risks and costs of continued litigation, Plaintiffs and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. Kring Dec., ¶¶ 4, 7-8, 14; Declaration of Jean-Claude Lapuyade (“Lapuyade Dec.”), ¶¶ 10-18; Declaration of Shani O. Zakay (“Zakay Dec.”), ¶ 3; Declaration of David D. Bibiyan (“Bibiyan Dec.”), ¶¶ 1-13. The LWDA has been provided with notice of this motion and the Settlement, and the decision of LWDA to accept the Settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. Kring Dec., ¶ 6.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Cal. Lab. Code § 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiffs seek approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys’ fees and costs are reasonable. Kring Dec., ¶¶ 15-17; Lapuyade Dec., ¶¶ 3-9; Zakay Dec., ¶¶ 4-8; Bibiyan Dec., ¶¶ 11-13.

///

///

///

///

///

///

///



1 **V. THE ATTORNEYS' FEES AND ATTORNEYS' COSTS PAYMENTS ARE FAIR**
2 **AND REASONABLE**

3 PAGA Counsel seeks approval of Attorneys' Fees in the amount of \$130,000.00 (40% of
4 the Gross Settlement Amount) and Attorneys' Costs not to exceed \$25,000⁶ for reimbursement of
5 actually incurred litigation expenses. PAGA does not have any requirements for reviewing
6 attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
7 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
8 review the requested attorneys' fees, the requested fees and costs are reasonable for experience
9 wage and hour counsel. Kring Dec., ¶¶ 7, 15-17; Lapuyade Dec., ¶¶ 3-9; Zakay Dec., ¶¶ 4-8;
10 Bibiyan Dec., ¶¶ 7-13.

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

12 The requested Attorneys' Fees of \$130,000.000 and reimbursement of Attorneys' Costs of
13 up to \$25,000 is fair, reasonable, and justified by the result achieved. Agreement at § 3.2.2; Kring
14 Dec., ¶¶ 7, 15-17; Lapuyade Dec., ¶¶ 3-9; Zakay Dec., ¶¶ 4-8; Bibiyan Dec., ¶¶ 11-13. PAGA
15 Counsel negotiated a recovery of \$325,000, and this result justifies the requested fees equal to 40%
16 of this recovery. This percentage is within the standard contingent recovery percentage. At the time
17 this case was brought, the result was far from certain. Defendants' defenses to the merits of the case
18 created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here,
19 several defenses asserted by Defendants present serious threats to the claims of Plaintiffs and the
20 Aggrieved Employees. Defendants asserted that its employment practices complied with all
21 applicable labor laws. If successful, Defendants' factual and legal defenses would eliminate *any*
22 *recovery* to the Aggrieved Employees. While Plaintiffs believe that these defenses could be
23 overcome, Defendants maintain that these defenses have merit and therefore present a serious risk
24 to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was
25 able to persuade Defendants that there was an appreciable risk that Plaintiffs would prevail on the
26

27
28 ⁶ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$18,463.91 litigating
this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of
hearing on this motion.



1 factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief.
2 Kring Dec. at ¶ 10.

3 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
4 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
5 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte v. Robert*
6 *Half Intern., Inc.*, (2016) 1 Cal. 5th at 506 (approving one-third fee award with multiplier between
7 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, (2010) 182 Cal.App.4th 278 (noting
8 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v.*
9 *Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224, 254 (noting that multipliers can range from 2 to
10 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
11 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*,
12 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58
13 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
14 at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling
15 within the "majority" range for risk multipliers).

16 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
17 Counsels' current combined loadstar is \$217,071.67. Kring Dec., ¶ 15; Lapuyade Dec., ¶ 4; Zakay
18 Dec., ¶¶ 4-5; Bibiyan Dec., ¶¶ 11-12. Thus, PAGA Counsels' fee request is equal to PAGA
19 Counsel's loadstar with a negligible multiplier of .77 – well below the 2.13 multiplier approved in
20 *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v.*
21 *FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved
22 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics*
23 *Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved
24 33% fee award with cross-check lodestar multiplier of 1.7).

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

27 Attorneys who create a common fund for the benefit of a class are entitled to payment from
28 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*, (1992) 11 Cal. App. 4th 1410, 1423 n.6. 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 v. Clorox Co.*, 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 this motion, PAGA Counsel collectively expended \$18,463.91 prosecuting this action (Kring & Chung, LLP- \$11,865.75; JCL Law Firm, APC - \$3,553.55; Zakay Law Group, APLC - \$643.25; Bibiyan Law Group, P.C.- \$2,401.36). Kring Dec., ¶ 16; Lapuyade Dec., ¶¶ 3, 7-9; Zakay Dec., ¶¶ 7-8; Bibiyan Dec., ¶ 13. 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. Kring Dec., ¶ 16; Lapuyade Dec., ¶ 3; Zakay Dec., ¶¶ 7-8; Bibiyan Dec., ¶ 13.

VI. PLAINTIFFS' ENHANCEMENT AWARDS ARE 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.*, (2004) 115 Cal.App.4th 715, 726 (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

///



1 into the litigation; (3) whether the litigation will further the public policy underlying the statutory
2 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, (2009) 175 Cal.
3 App. 4th 785, 804-805.

4 The Settlement provides for a Plaintiffs' Enhancement Awards totaling \$15,000.00 (\$5,000
5 to each named Plaintiff). Plaintiffs' Enhancement Awards are fair and reasonable compensation for
6 the Plaintiffs' efforts bringing the action, assisting PAGA Counsel with the litigation and
7 settlement, regularly conferring with PAGA Counsel on the status of their case and the strategies
8 for prosecuting the claims and agreeing to provide Defendants a broad general release of all claims
9 arising out of their employment. Plaintiffs willingly came forward to protect and advance the
10 rights of the Aggrieved Employees on important legal disputes affecting California employees. By
11 way of example, Plaintiffs assumed the serious risk of liability for Defendants' costs and
12 potentially fees if the case was unsuccessful. Nevertheless, Plaintiffs knowingly and voluntarily
13 undertook the risk to vindicate the rights of the Aggrieved Employees. Kring Dec., at ¶ 18;
14 Declaration of Alex Gonzalez ("Gonzalez Dec."), ¶¶ 4-5; Declaration of Norma Reyes ("Reyes
15 Dec."), ¶ 6.

16 Plaintiffs' efforts in bringing the lawsuit conferred a monetary benefit to 600 Aggrieved
17 Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve
18 Plaintiffs' Enhancement Awards in accordance with the Settlement Agreement. Kring Dec. at ¶ 18;
19 Gonzalez Dec. at ¶¶ 4-5; Reyes Dec., ¶¶ 8-11.

20 **VII. CONCLUSION**

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

24
25 DATED: April 17, 2024

BIBIYAN LAW GROUP

26 By: David D. Bibiyan

27 David D. Bibiyan, Esq.

28 Counsel for Plaintiff Ramon Mauricio Perez



1 DATED: April 17, 2024

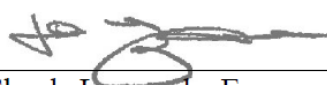
KRING & CHUNG LLP

2 By: 

3 Tyler D. Kring, Esq.
4 Counsel for Plaintiff Alex Gonzalez

5 DATED: April 17, 2024

JCL LAW FIRM, APC

6 By: 

7 Jean-Claude Lapuyade, Esq.
8 Sydney Castillo-Johnson, Esq.
9 Perssia Razma, Esq.
10 Co-Counsel for Plaintiff Norma Reyes

11 DATED: April 17, 2024

ZAKAY LAW GROUP, APC

12 By: 

13 Shani O. Zakay, Esq.
14 Co-Counsel for Plaintiff Norma Reyes

