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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

PASHA KRAFT, an individual, on behalf of the
State of California, as a private attorney general,

Plaintiff,

v.

THE LAGUNITAS BREWING COMPANY, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. SCV-272762

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

Hearing Date: To Be Set By Court

Hearing Time: To Be Set By Court

Judge: Hon. Patrick Broderick
Dept.: 16

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Pasha Kraft (“Plaintiff”) seeks approval of the Joint Stipulation of Settlement of
4 PAGA Action and Release of PAGA Claims (“Agreement”)¹, which if approved, would provide
5 valuable monetary relief for 171 “Aggrieved Employees,” defined as all individuals who are or
6 previously were employed by The Lagunitas Brewing Company (“Defendant”) in California and
7 classified as non-exempt employees during the period between December 28, 2021 and August 21,
8 2023 (“PAGA Period”). Agreement at §§ I(B); I(U); III(A)(2). This is only a settlement of the PAGA
9 claim for civil penalties and is not a class settlement and does not release the individual wage claims,
10 if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian*
11 *v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
12 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and Development
14 Agency (“LWDA”) will share in a Gross Settlement Amount of Two Hundred and Twenty Thousand
15 Dollars and Zero Cents (\$220,000.00). Agreement at § I(L). After deducting any Court-approved
16 PAGA Counsel Award, Service Awards, and the Claims Administration Expenses, the Net Settlement
17 Amount shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees. Agreement
18 at § I(O).

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 and reasonable. The Settlement is a product
21 of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel.
22 As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
23 Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the
24 Agreement. JCL Dec., at ¶ 10.

25
26 ///

27
28 ¹ The Agreement is attached as Ex. “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2022, Plaintiff, on behalf of herself and on behalf of the 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, including failure to pay minimum wages in violation of Labor Code sections 1194, 1197 and 1197.1; failure to pay overtime wages in violation of Labor Code sections 510; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to reimburse employees for required expenses in violation of Labor Code section 2802; failure to provide wages when due in violation of Labor Code sections 201, 202, and 203; failure to provide accurate itemized wage statements in violation of Labor Code section 226; and unlawful deductions in violation of Labor Code section 221. (LWDA Case Number LWDA-CM-926430-22). JCL Dec., at ¶¶ 4-5, 11.

The 65-day “waiting period” on Plaintiff’s right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 12.

On March 7, 2023, Plaintiff filed a Representative Action complaint against Defendant in the Superior Court for Sonoma, Case Number SCV-272762 (the “Action”). The complaint alleged a single cause of action for violations of the Private Attorneys General Act at Cal. Lab. Code §§2698, *et seq.* JCL Dec., ¶ 13.

On August 21, 2023, the Parties attended a full-day mediation with experienced wage and hour class and PAGA action mediator, Steven J. Serratore, Esq. In advance of the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant’s liability exposure for civil penalties to the Aggrieved Employees. The data and documents Defendant produced included, but were not limited to, the total number Aggrieved Employees and pay periods, written wage and hour policies, employee handbooks, and a sample of all time and payroll records for the Aggrieved Employees. JCL Dec., ¶ 14.

At the conclusion of the mediation, and with the assistance of the mediator, the Parties reached

1 a settlement. The Parties subsequently executed a binding and enforceable Memorandum of
2 Understanding (“MOU”). Thereafter, the Parties drafted and negotiated a long-form Settlement
3 Agreement which is the subject of the instant motion. The Settlement was negotiated in light of all
4 known facts and circumstances and the uncertainty associated with litigation – including the risk of
5 Plaintiff not being able to maintain representative claims and establishing manageability, the difficulty
6 of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential defenses, and
7 the significant delay and potential appellate issues inherent to litigation – and was reached after
8 extensive arm’s length negotiations, with the assistance of mediator. JCL Dec., at ¶ 15.

9 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by
10 Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a settlement of
11 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
12 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
13 PAGA claim.² Nor does this Settlement waive Defendant’s right to assert *res judicata* or other
14 available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 16.

15 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
16 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
17 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
18 submit to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement
19 within ten (10) days after entry of judgment or order. JCL Dec., at ¶¶ 6, 17.

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

21 **A. The Gross Settlement Amount**

22 The PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
23 The Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount”
24 payment in the amount of Two Hundred and Twenty Thousand Dollars and Zero Cents (\$220,000.00)
25 to resolve the Released PAGA claims. From the Gross Settlement Amount, of the Parties agreed to
26 deduct attorneys’ fees in the amount of \$73,333.33 (which is one-third of the Gross Settlement
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.”

Amount), reimbursement of incurred attorneys' expenses in an amount not to exceed \$20,000.00 (collectively, "PAGA Counsel Award"), and payment of Claims Administration Costs to the Claims Administrator in an amount not to exceed \$6,500.00. Agreement at §§ III(I)(8)-(9). After these deductions, the amount remaining is the "Net Settlement Amount," which is estimated to be \$120,166.67. Agreement at § I(O).

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

B. Allocation of Individual Aggrieved Employee Payments

The Individual Aggrieved Employee Payments to the Aggrieved Employees shall be based on the number of Pay Periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total Pay Periods worked by all Aggrieved Employees during the PAGA Period. Agreement at § III(I)(1).

At the time of mediation, Defendant estimated that there were approximately 171 Aggrieved Employees who worked approximately 4,815 Pay Periods during the PAGA Period based on company records. Should the number of Pay Periods during the PAGA Period increase by more than 10% of this estimate, Defendant shall increase the Gross Settlement Amount proportionally. Agreement at § III(A)(2).

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall pay the Gross Settlement Amount within ten (10) calendar days of the Effective Date (the "Funding Date"). Agreement at § I(K). The Effective Date is the date upon which the Court enters the order approving the Settlement of the PAGA penalties as described in the Parties' Settlement Agreement. Agreement at § I(I).

Within fifteen (15) calendar days of the date on which the Gross Settlement Amount is funded in full by Defendant, in accordance with the terms of the Settlement Agreement, the Claims

1 Administrator will transmit the LWDA Payment to the LWDA as one lump sum payment. Agreement
2 at § III(I)(7).

3 No later than five (5) calendar days after the Funding Date, the Claims Administrator will mail
4 the Individual Aggrieved Employee Payments to the Aggrieved Employees by regular First-Class U.S.
5 Mail to the Aggrieved Employees' last known mailing address. § III(I)(4). Settlement checks issued
6 to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by
7 the Claims Administrator. Agreement at § III(I)(6). If the check remains uncashed by the expiration
8 of the 180-day period, the Claims Administrator shall transmit the funds represented by such checks
9 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee, in
10 accordance with California Code of Civil Procedure section 384 and subject to Court approval.
11 Agreement at § III(I)(6). The Individual Aggrieved Employee Payments constitute 100% penalties
12 and shall be reported using IRS Form 1099s. Agreement § III(I)(2).

13 **D. Release of Claims**

14 Upon entry of final judgment and funding of the Gross Settlement Amount in full, Plaintiff,
15 the LWDA and the State of California shall release the Released PAGA Claims against Defendant and
16 its former and present parents, subsidiaries, and affiliates, and their officers, directors, owners,
17 executives, partners, employees, shareholders, agents, and any other successors, assigns, or legal
18 representatives ("Released Parties"). Agreement at §§ I(AA); III(B). The Released PAGA Claims
19 defined as all PAGA claims that occurred within the PAGA Period that were alleged, or that could
20 have been alleged based on the facts asserted, in the operative PAGA complaint and/or Plaintiff Kraft's
21 PAGA Notice to the LWDA, and expressly excluding all other claims, including claims for vested
22 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
23 compensation, and PAGA claims outside of the PAGA Period. Released PAGA Claims include, but
24 are not limited to, claims for PAGA penalties arising from alleged violations of California Labor Code
25 §§ 201, 202, 203, 221, 226, 226.7, 351, 510, 512, 1194, 1197, and 1197.1. Agreement at § I(Z).

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

27 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
28 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.(1)(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. (1)(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 amount to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$220,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 18. Here, *without stacking* the PAGA penalties, Defendant’s *maximum* liability exposure is estimated at approximately \$481,500 in PAGA penalties. If derivative penalties are included (or “stacked”), Defendant’s maximum liability exposure is estimated at approximately \$1,148,200. JCL Dec., ¶ 19. Plaintiff’s expert consultant estimated Defendant’s exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	3,134	65.1% of PAGA Pay Periods	\$156,700
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	3,134	65.1% of PAGA Pay Periods	\$156,700
<i>Miscalculated Regular Rate of Pay for Purposes of</i>	\$50	2,250	52.3% of PAGA Pay Periods	\$112,500

<i>Overtime, Meal Premiums, and Redeemed Sick Pay</i> Cal. Labor Code §§ 246, 201, 202, 203, 204				
<i>Business Reimbursement Violations</i> Cal. Labor Code § 2802	\$100	2,408	50% of PAGA Pay Periods	\$240,800
<i>Wage Statement Violations</i> Cal. Labor Code § 226(a)	\$100	4,815	100% of PAGA Pay Periods	\$481,500

i. Estimated Penalties for Meal Period Violations

Plaintiff also alleged that Defendant's time records reflected non-compliant meal periods, and that Defendant regularly failed to provide meal periods to Plaintiff and other Aggrieved Employees. Based upon review of time and payroll records, Plaintiff's expert identified at least one meal period violation in 65.1% of PAGA Pay Periods. Plaintiff estimated the damages for this claim at \$156,700. This number was calculated by multiplying the number of total pay periods where there was a meal period violation by a violation rate of \$50. The \$50 penalty rate was used because California Labor Code section 558(a)(1) specifically provides for a civil penalty. JCL Dec., ¶ 25.

Conversely, Defendant asserted that it maintained facially compliant meal period policies and practices throughout the PAGA Period, and that any non-compliant meal break was the result of voluntary waiver of the same by the employee. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 26.

ii. Estimated Penalties for Rest Period Violations

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

Because rest periods are not recorded, Plaintiff's expert could not identify a violation rate. Plaintiff therefore made the reasonable assumption that rest period violations were committed at a rate similar to that of meal period violations (65.1%). JCL Dec., ¶ 22.

Based on this assumed violation rate for shifts of at least 3.5 hours, which resulted in 3,134 PAGA Pay Periods containing a violation, Plaintiff contended that her claim for rest period violations was potentially worth approximately \$156,700. This was calculated by multiplying the number of total

1 pay periods with a rest period violation by a violation rate of \$50. Pursuant to California Labor Code
2 section 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section
3 regulating hours and days of work, including meal period and rest period violations. Thus, because
4 section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for
5 the meal and rest break claims. JCL Dec., ¶ 23.

6 Defendant argued that Plaintiff's rest break claim would have mainly relied on the testimony
7 of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed
8 competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See,*
9 *e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013 2013 WL 210223, at *11 ("Because of the
10 competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written
11 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v.*
12 *United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed,
13 Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). JCL
14 Dec., ¶ 24.

15 **iii. Estimated Penalties for Miscalculation of Regular Rate of Pay for Purposes**
16 **of Overtime, Meal Premiums, and Redeemed Sick Pay**

17 Plaintiff alleged that Defendant failed to include non-discretionary incentive compensation
18 when calculating the regular rate of pay for purposes of overtime, meal premiums, and redeemed sick
19 pay. Plaintiff's expert estimated that Defendant's exposure for this claim was approximately \$112,500.
20 This number was calculated by multiplying the number of pay periods with a violation of overtime,
21 sick pay, and meal premium regular rate calculations by a violation rate of \$50 per pay period, pursuant
22 to Labor Code section 558. JCL Dec., ¶ 27.

23 Conversely, Defendant denied liability and asserted it paid the correct rate of pay for purposes
24 of overtime wages and sick pay. Defendant also argued that the bonuses were discretionary and did
25 not need to be included in the regular rate calculation for payment of overtime wages and sick pay.
26 JCL Dec., ¶ 28.

27 ///

1 **iv. Estimated Penalties for Defendant’s Violation of Labor Code §2802**

2 Plaintiff alleged that Defendant required Plaintiff and the Aggrieved Employees to use their
3 personal cell phones for Defendant’s benefit. Specifically, employees in the bottling line and can line
4 were required to use their personal cell phones for essential communication, since Defendant did not
5 provide them with two-way radios or any other communication device. Additionally, employees
6 working in the taproom were required to use their personal cell phones for business purposes, such as
7 communication with management to discuss various scheduling issues. Plaintiff and the Aggrieved
8 Employees were required to incur expenses for their personal cell phone for which they were not
9 reimbursed or compensated. Defendant denied any liability for this claim. Defendant argued that any
10 cell phone use was not mandatory. JCL Dec., ¶ 29.

11 Because expense reimbursements are required on a monthly basis, only half of the pay periods
12 were potentially affected by this alleged violation. Therefore, Plaintiff’s expert estimated that
13 Defendant’s total exposure for this claim was approximately \$240,800 in penalties. This was
14 calculated by multiplying a 50% violation rate by the total number of pay periods by a violation rate
15 of \$100 per pay period. Plaintiff used a 50% violation rate for this claim to reflect its belief that
16 Aggrieved Employees incurred cell phone expenses every month. JCL Dec., ¶ 30.

17 **v. Estimated Penalties for Defendant’s Inaccurate Wage Statements**

18 Plaintiff alleged facial wage statement violations based on Defendant incorrectly listing the
19 total hours worked. Plaintiff’s expert estimated that Defendant’s exposure for this claim was
20 approximately \$481,500 in penalties. This was calculated by multiplying the total number of pay
21 periods by a violation rate of \$100 per pay period. Plaintiff assumed that 100% of PAGA Pay Periods
22 contained a violation for inaccurate wage statements. Plaintiff’s Counsel weighed the potential
23 recoveries against probable defenses. JCL Dec., ¶ 31.

24 **vi. The Gross Settlement Compares Favorably to the Likely Recovery**

25 In light of the above, the Gross Settlement Amount is approximately 45.7% of Defendant’s
26 potential unstacked PAGA exposure, and 19.2% of Defendant’s potential stacked PAGA exposure.
27 The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through
28 continued litigation. JCL Dec., ¶ 19.

1 Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation
2 because it fails to account for the risks of continued litigation including, but not limited to, Defendant's
3 defenses. Here, Defendant argued that it can only be assessed civil penalties for actual violations of
4 the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff
5 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice,*
6 *Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA],
7 a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
8 violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each
9 Aggrieved Employee was subject to the alleged Labor Code violation. JCL Decl., ¶ 32. Thus,
10 Defendant contended that Plaintiff would be required to "prove Labor Code violations with respect to
11 each and every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA."
12 *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). When
13 "determining whether the employer committed Labor Code violations with respect to each employee"
14 is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore*, 2021 WL
15 4099059, *11 (Cal. Ct. App. Sept. 9, 2021. JCL Decl., ¶ 33.

16 Second, a ballot initiative to eliminate PAGA has qualified for the 2024 ballot.
17 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/)
18 [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
19 pursue civil penalties via a representative action. Plaintiff views this initiative as a significant
20 additional risk due to the potential limitation on her ability to recover penalties against Defendant
21 should litigation continue. JCL Dec., ¶ 34.

22 Finally, the maximum penalty figure does not consider that Courts have complete discretion
23 to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
24 the facts and circumstances of the particular case, to do otherwise would result in an award that is
25 unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)). JCL Dec., ¶ 35. In
26 fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g.*
27 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per
28 pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of

1 liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed
2 the penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th
3 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion
4 to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
5 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011
6 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA
7 civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees
8 suffered no injuries as a result of the erroneous wage statements and made no complaints about the
9 errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*,
10 *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018,
11 Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco
12 Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA
13 penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable
14 in light Defendant’s arguments. JCL Dec., ¶ 36.

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

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

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

1 **i. The Attorneys' Fees and Expenses are Fair and Reasonable**

2 PAGA Counsel seeks approval of attorneys' fees in the amount of \$73,333.33 (one-third of the
3 Gross Settlement Amount) and attorneys' expenses not to exceed \$20,000.00³ for reimbursement of
4 actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys'
5 fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a
6 matter of contract for a contingent representation. Nevertheless, should this Court review the
7 requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour
8 counsel. JCL Dec., ¶ 39.

9 **V. THE ATTORNEYS' FEES AND EXPENSES ARE FAIR AND REASONABLE**

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

11 The requested attorneys' fees of \$73,333.33 and reimbursement of attorneys' expenses of up
12 to \$20,000.00 is fair, reasonable, and justified by the result achieved. JCL Dec., ¶40. PAGA Counsel
13 negotiated a recovery of \$220,000.00, and this result justifies the requested fees equal to one third of
14 this recovery. This percentage is the standard contingent recovery percentage of one-third, and this
15 percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*,
16 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain.
17 Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues
18 for PAGA Counsel to overcome. Here, as noted above in section IV(A), several defenses asserted by
19 Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. While
20 Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have
21 merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA
22 Counsels' eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk that
23 Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in
24 proof as to monetary relief. JCL Dec., ¶ 41.

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 accepting
27

28 ³ As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$18,118.93 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506
2 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half*
3 *Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied
4 and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
5 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8
6 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of
7 lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third
8 of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-
9 LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a
10 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 Counsels'
12 current combined loadstar is \$95,793.33. JCL Dec., ¶¶42-47; Declaration of Shani Zakay ("Zakay
13 Dec.") at ¶¶ 4-6. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a
14 negative multiplier of 0.76 – well below the 2.13 multiplier approved in *Laffitte* – and well within the
15 recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist.
16 LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check
17 lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist.
18 LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check
19 lodestar multiplier of 1.7).

20 **B. PAGA Counsel Are 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. *See*
25 *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

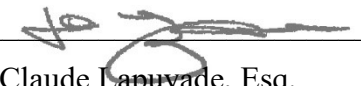
costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for the filing of this motion, PAGA Counsel collectively expended \$18,118.93 prosecuting this action (JCL Law Firm, APC - \$9,675.72 and Zakay Law Group, APLC - \$8,443.21). JCL Decl. ¶¶ 8, 48; Zakay Dec., ¶¶ 7-8. 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., ¶¶ 8, 49.

V. CONCLUSION

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

Dated: May 2, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.