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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

FREDERICK LINDSAY, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

STAFFMARK INVESTMENT LLC, a
Delaware limited liability company, DENSO
INTERNATIONAL AMERICA, INC., a
Delaware corporation; DENSO PRODUCTS
AND SERVICES AMERICAS, INC., a
California corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. CVRI2203360

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

Hearing Date: December 10, 2024
Hearing Time: 8:30 A.M.

Judge: Hon. Harold W. Hopp
Dept.: 1

Reservation ID: 702175035858

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Frederick Lindsay (“Plaintiff”) seeks approval of the Stipulation of Settlement of
4 PAGA Claims and Release of PAGA Claims (“Agreement”)¹, which if approved, would provide
5 valuable monetary relief for 735 “Aggrieved Employees,” defined as all California non-exempt
6 employees employed directly by Denso (“Denso Aggrieved Employees”), or employed by Staffmark
7 and placed to work at Denso (“Staffmark Aggrieved Employees”) in California at any time between
8 September 11, 2021 through July 14, 2024 (the “PAGA Period”). Agreement at §§ I(B); I(Q). This
9 is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than Plaintiff’s himself.
11 Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A.*
12 *v. Superior 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 Development
14 Agency (“LWDA”) will share in a Gross Settlement Amount of Four Hundred Seventy-Five
15 Thousand Dollars and Zero Cents (\$475,000.00). Agreement at § I(K). After deducting any Court-
16 approved PAGA Counsel Award, Service Awards, and the Claims Administration Expenses, the
17 PAGA Payment shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees.
18 Agreement at § I(M).

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 ¶ 9.

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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

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA

On June 3, 2022, Plaintiff Lindsay, on behalf of himself and on behalf of other “Aggrieved Employees,” served Defendants and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendants 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 provide accurate itemized wage statements in violation of Labor Code section 226; and failure to provide wages when due in violation of Labor Code sections 201, 202, and 203 (LWDA Case Number LWDA-CM-887277-22). JCL Dec., at ¶¶ 4-5, 10.

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

B. Plaintiff's Civil Action Against Defendants

On August 10, 2022, Plaintiff Lindsay filed a class action complaint against Defendants in the Superior Court for Riverside, Case Number CVRI2203360 (the “Lindsay Action”). The complaint alleged seven causes of action for (1) Unfair Competition in Violation of Cal. Bus. & Prof Code §§ 17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Labor Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code § 226; and (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201-203. Plaintiff subsequently dismissed the class claims without prejudice and filed an amended complaint on November 15, 2022, alleging a single cause of action for civil penalties under the Private Attorneys General Act of 2004

1 (“PAGA”). Accordingly, this Action thus proceeded on a PAGA-only basis. JCL Dec., ¶ 12.

2 On May 14, 2024, the Parties attended a full-day mediation with experienced judge and wage
3 and hour class and PAGA action mediator, Hon. Brian C. Walsh (Ret.). In advance of the mediation,
4 Defendants provided Plaintiff with sufficient information to properly evaluate Defendants’ liability
5 exposure for civil penalties to the Aggrieved Employees. The data and documents Defendants
6 produced included, but was not limited to, the total number Aggrieved Employees and pay periods,
7 written wage and hour policies, employee handbooks, and a sample of all time and payroll records for
8 the Aggrieved Employees. JCL Dec., ¶ 13.

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

18 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by
19 Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a settlement of
20 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
21 claims, if any, of the Aggrieved Employees other than that of Plaintiff. This Settlement does not release
22 any claim that is not a PAGA claim.² Nor does this Settlement waive Defendants’ right to assert *res*
23 *judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 15.

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

submit to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶¶ 5, 16.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount” payment in the amount of Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$475,000.00) to resolve the Released PAGA claims. From the Gross Settlement Amount, there is a deduction of attorneys’ fees in the amount of \$158,333.33 (which is one-third of the Gross Settlement Amount), reimbursement of incurred attorneys’ expenses in an amount not to exceed \$30,000.00 (collectively, “PAGA Counsel Award”), an Enhancement Payment of not more than \$5,000.00 to Plaintiff, and payment of Claims Administration Costs to the Claims Administrator in an amount not to exceed \$12,000.00. Agreement at §§ III(A)(1); III(H)(8)-(10). After these deductions, the Net Settlement Amount remaining, which is estimated to be \$269,666.67, will be used to satisfy Plaintiff’s claims for civil penalties arising under PAGA asserted on behalf of the Aggrieved Employees and the LWDA. Agreement at § I(M)

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(M). 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(H)(1).

At the time of mediation, Defendants estimated that there were approximately 735 Aggrieved Employees who worked a total of approximately 23,005 Pay Periods during the PAGA Period based on company records. This includes 4,082 Pay Periods worked by the Aggrieved Employees assigned

1 to Denso by Staffmark, and 18,923 Pay Periods worked by the Aggrieved Employees Denso directly
2 hired. Agreement at § III(A)(3). Should the number of total Pay Periods during the PAGA Period
3 increase by more than 10% of what was represented at the mediation, the Gross Settlement Amount
4 shall be proportionally increased. Agreement at § III(A)(3).

5 **C. Funding and Distribution**

6 Provided that an order approving this Settlement is entered by the Court, Defendants shall fund
7 the Gross Settlement Amount within thirty (30) days of the Effective Date. The Effective Date means:
8 (i) the date the Court issues the order granting approval of this Settlement Agreement if no objections
9 to the settlement are filed, or if an objection is filed but is withdrawn prior to the Court's approval
10 hearing; or (ii) in the event there are written objections filed prior to the approval hearing which are
11 not thereafter withdrawn prior to the hearing, the later of the following events: (a) the day after the
12 last day by which a notice of appeal of the order may be timely filed with an appellate court, and none
13 is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the
14 day after the last date for filing a request for further review of the appellate court's decision passes and
15 no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
16 dismissal, denial, or otherwise by the appellate court, and further review of the order can be requested;
17 or (d) if review is accepted, the day the appellate court affirms the Settlement. Agreement at § I(H);
18 I(J).

19 Within fifteen (15) calendar days of the date on which the Gross Settlement Amount is funded
20 in full by Defendants, in accordance with the terms of the Settlement Agreement (the "Funding Date"),
21 the Settlement Administrator will transmit the LWDA Payment to the LWDA as one lump sum
22 payment. Agreement at § III(H)(7).

23 No later than fourteen (14) calendar days after the Funding Date, the Settlement Administrator
24 will mail the Individual Aggrieved Employee Payments to the Aggrieved Employees by regular First-
25 Class U.S. Mail. § III(H)(4). Settlement checks issued to Aggrieved Employees will expire one
26 hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement
27 at § III(H)(6). If the check remains uncashed by the expiration of the 180-day period, such funds will
28 escheat to the State of California's Controller, to be held in the name of each expired check payee,

pursuant to applicable unclaimed property laws. Agreement at § III(H)(6). The Individual Aggrieved Employee Payments are 100% penalties and interest and shall be reported using IRS Form 1099s. Agreement § III(H)(2).

D. Release of Claims

As of the Effective Date and upon funding of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the Released Claims for the PAGA Period. The Released Parties are defined as Staffmark Investment LLC and its officers, directors, employees, and agents; Denso International America, Inc. and its officers, directors, employees, and agents; Denso Products and Services Americas, Inc. and its officers, directors, employees, and agents; and Staffmark Group, LLC, Advantage Technical Resourcing, Inc., and Advantage Human Resourcing, which are entities affiliated with Staffmark Investment LLC. The Released Claims include any allegations brought in the operative complaint or included in the PAGA Notice, or any claims that could have reasonably been asserted in the operative complaint or PAGA Notice based on the facts alleged, which occurred during the PAGA Period. Agreement at §§ I(X) (Y); III(B).

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(l) 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. (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 \$475,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 17. Here, *without stacking* the PAGA penalties, Defendants’ liability exposure is estimated at approximately \$2,424,750.00 in PAGA penalties. JCL Dec., ¶ 18. Plaintiff’s expert consultant estimated Defendants’ 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	7,405	28.8%	\$370,250.00
<i>Regular Rate of Pay</i>	\$50	2,633	10.3%	\$131,650.00
<i>Unpaid Wages</i> Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	\$50	25,638	100%	\$1,281,900.00
<i>Business Reimbursement Violations</i> Cal. Labor Code § 2802	\$50	12,819	50%	\$640,950.00

JCL Dec., ¶ 18.

i. Estimated Penalties for Defendant’s Alleged Meal Period Violations

Plaintiff alleges that Defendants failed to provide meal periods, in violation of Labor Code 512. Specifically, Plaintiff alleges that as a result of Defendants’ rigorous workload requirements, Plaintiffs and Aggrieved Employees were required to work through their meal periods in order to complete various tasks. In particular, Plaintiff alleges that Defendants had strict production and quota requirements, whereby Plaintiffs and the Aggrieved Employees were required to work as quickly as possible, and regularly into their meal periods, in order to meet Defendants’ rigorous performance

1 requirements. For example, Defendants required Plaintiff to ensure his station was completely clean
2 before going on his meal break, but it was not feasible for Plaintiff Lindsay to clean his station prior
3 to the end of his fifth hour of work due to the time restraints and quota requirements imposed on him
4 by Defendants. Similarly, Plaintiff occasionally clocked out for his meal break and continued to
5 perform work off-the-clock for five to ten minutes. Plaintiff also alleges that some meal periods were
6 either rounded, evidenced by 39% of Defendant Denso employees' and 45.2% of Defendant
7 Staffmark/Denso employees' first meal periods being recorded at exactly 30 minutes in length.
8 Defendants denied Plaintiff's allegations, and contend that the Aggrieved Employees had substantial
9 control over their schedules, and to the extent non-compliant meal breaks were recorded, this
10 encompasses scenarios in which Aggrieved Employees opted to delay, shorten or skip their own meal
11 period for a variety of reasons. Defendants also deny that any meal breaks were rounded, and argued
12 that if a rounding practice were in place, all meal periods would so reflect it, rather than the
13 percentages raised by Plaintiff. Plaintiff estimates Defendants' exposure for this claim to be
14 \$370,250. JCL Dec., ¶ 19. This number was calculated using violation rate of \$50.

15 The \$50 penalty rate was used for a number of reasons in this instance. First, Defendants
16 argued that increased civil penalties for subsequent violations do not apply unless the plaintiff can
17 present evidence that the Labor Commission or a court notified the employer that it was in violation
18 of the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the
19 employer has been notified that it is violating a Labor Code provision ... the employer cannot be
20 presumed to be aware that its continuing underpayment of employees is a 'violation' subject to
21 penalties."].) Separately, Defendants also argued that courts have considerable discretion to reduce
22 the penalty awards under PAGA. *See, e.g. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504
23 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is
24 unlikely that Plaintiffs would recover full penalty amounts even if they prevailed in establishing the
25 underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer
26 is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of
27 work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically
28

provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 20.

ii. Estimated Penalties for Defendants' Alleged Miscalculation of Regular Rate of Pay

Plaintiff alleges that Defendants failed to include non-discretionary incentive compensation when calculating the regular rate of pay for purposes of overtime, redeemed sick pay, and meal period premiums. Specifically, Plaintiff's expert found a number of different bonuses that were not properly included in the regular rate of pay calculation for purposes of calculating and paying overtime, sick pay, or meal period premiums. Defendants deny that all of the bonuses raised by Plaintiff can be properly categorized as non-discretionary and accordingly, did not need to be calculated into the regular rate of pay. Plaintiff estimated that Defendants' total exposure for this claim was approximately \$131,650 in penalties. JCL Dec., ¶ 21.

iii. Estimated Liability for Defendants' Violation of Labor Code §2802

Plaintiff alleged that Defendants required Plaintiff and the Aggrieved Employees to use their personal cell phones for Defendants' benefit. Specifically, Plaintiff alleges that Defendants did not equip the Aggrieved Employees with walkie talkies, however the Aggrieved Employees were expected to communicate with one another and with Defendants via a cordless communication device. Defendants sent messages to Plaintiff and the Aggrieved Employees via their personal cell phones regarding machines, parts, and completion of work tasks each day. Plaintiff estimated that Defendants' total exposure for this claim was approximately \$640,950 in penalties. This was calculated by multiplying a 50% violation rate by the total number of pay periods by a violation rate of \$50 per pay period. Plaintiff used a 50% violation rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone expenses approximately once per month. JCL Dec., ¶ 22.

iv. Estimated Penalties for Unpaid Wages

Plaintiff alleges that Defendants failed to pay all minimum and overtime wages when he and other Aggrieved Employees worked off the clock. Specifically, Plaintiff alleged that he and other Aggrieved Employees worked through meal breaks, as discussed above, and also performed work after they clocked out. Such post-shift, off-the-clock work included cleaning their stations after each

1 shift. Akin to the meal period discussion above, Defendants’ strict production requirements during
2 scheduled work hours effectively forced employees to have to clean their stations after their shifts
3 ended. Defendants deny these allegations and contends that employees were instructed not to work
4 off-the-clock, and to the extent any off-the-clock work was in fact performed, it was not done at the
5 direction of or with the knowledge of Defendants. Plaintiff estimates that Defendants’ total exposure
6 for this claim was approximately \$1,281,900 in penalties. This was calculated using a 100% violation
7 rate multiplied by a \$50 penalty. JCL Dec., ¶ 23.

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

9 In light of the above, the Gross Settlement Amount is approximately 19.6% of Defendants’
10 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
11 of PAGA penalties through continued litigation. JCL Dec., ¶ 24. Defendants’ maximum exposure to
12 PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of
13 continued litigation including, but not limited to, Defendants’ defenses. Here, Defendants argue that
14 it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code §
15 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the
16 underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
17 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a plaintiff cannot recover on
18 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
19 defendant.”].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the
20 alleged Labor Code violation. JCL Decl., ¶ 25. Thus, Defendants contended that Plaintiff would be
21 required to “prove Labor Code violations with respect to each and every individual on whose behalf
22 plaintiff seeks to recover civil penalties under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009
23 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). JCL Dec., ¶ 26.

24 Moreover, the maximum penalty figure does not consider that Courts have complete discretion
25 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
26 the facts and circumstances of the particular case, to do otherwise would result in an award that is
27 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). JCL Dec., ¶ 27. In
28 fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g.*

1 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per
2 pay period; “Although the trial court may have disagreed with Starbucks regarding the issue of
3 liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed
4 the penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th
5 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion
6 to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
7 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011
8 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA
9 civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees
10 suffered no injuries as a result of the erroneous wage statements and made no complaints about the
11 errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*,
12 *Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), *as modified* (May 9, 2023), *reh’g*
13 *denied* (May 15, 2023), *review denied* (July 12, 2023), *and disapproved of by Naranjo v. Spectrum*
14 *Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that
15 a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount
16 obtained by PAGA Counsel is reasonable in light of Defendants’ arguments. JCL Dec., ¶ 28.

17 Given Defendants’ defenses to the claimed Labor Code violations at issue, and the risks and
18 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
19 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL
20 Dec., ¶ 29. The LWDA has been provided notice of this motion and the PAGA settlement, and the
21 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
22 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
23 protect its own rights. JCL Dec., ¶ 30.

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

25 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
26 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
27 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
28 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs

1 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
2 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

4 PAGA Counsel seeks approval of attorneys' fees in the amount of \$158,333.33 (one-third of
5 the Gross Settlement Amount) and attorneys' expenses not to exceed \$30,000.00³ for reimbursement
6 of actually incurred litigation expenses. PAGA does not have any requirements for reviewing
7 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
8 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
9 review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage
10 and hour counsel. JCL Dec., ¶ 31.

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

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

13 The requested attorneys' fees of \$158,333.33 and reimbursement of attorneys' expenses of up
14 to \$30,000.00 is fair, reasonable, and justified by the result achieved. JCL Dec., ¶ 31. PAGA Counsel
15 negotiated a recovery of \$475,000.00, and this result justifies the requested fees equal to one third of
16 this recovery. This percentage is the standard contingent recovery percentage of one-third, and this
17 percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*,
18 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain.
19 Defendants' defenses to the merits of the case created difficulties with proof and complex legal issues
20 for PAGA Counsel to overcome. Here, as noted above in section IV(A), several defenses asserted by
21 Defendants presents serious threats to the claims of Plaintiff and the Aggrieved Employees. While
22 Plaintiff believes that these defenses could be overcome, Defendants maintains that these defenses
23 have merit and therefore present a serious risk to recovery. The Settlement was possible because, in
24 PAGA Counsel's eyes, PAGA Counsel was able to persuade Defendants that there was an appreciable
25 risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome
26 difficulties in proof as to monetary relief. JCL Dec., ¶ 32.

27
28 ³ As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$15,775.79 litigating this matter. Plaintiffs will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

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

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is \$113,698.50. JCL Dec., ¶¶33-38; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-6. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a multiplier of 1.39 - below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

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

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to

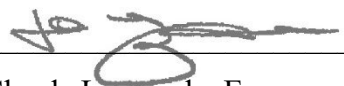
1 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
2 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
3 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
4 filing fees, mediation fees and investigation fees). Prior to incurring costs for the filing of this motion,
5 PAGA Counsel collectively expended \$15,775.79 prosecuting this action (JCL Law Firm, APC -
6 \$6,987.67, Zakay Law Group, APLC - \$8,788.12). JCL Decl. ¶¶ 7, 39; Zakay Dec., ¶¶ 7-8. PAGA
7 Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients
8 including the following: filing fees; copying; postage; factual and legal research charges; mediation
9 fees; and expert costs, which were all incurred during, and were necessary for the successful
10 prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec., ¶¶ 7, 40.

11 **V. CONCLUSION**

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

15
16 Dated: October 23, 2024

JCL LAW FIRM, APC

17 By: 
18 Jean-Claude Lapuyade, Esq.