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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

TONY DOYLE and BILLY JEFFERSON, as
PAGA Settlement Members pursuant to the
Private Attorneys General Act ("PAGA"), on
behalf of the State of California and other
PAGA Settlement Members,

Plaintiffs,

v.

CBOCS WEST, INC., a Nevada corporation;
CRACKER BARREL OLD COUNTRY
STORE, INC., a Tennessee corporation; and
DOES 1 through 10, inclusive,

Defendants.

CAMREEN TAYLOR, individually, and on
behalf of other PAGA Settlement Members
pursuant to the California Private Attorneys
General Act,

Plaintiff,

vs.

CRACKER BARREL OLD COUNTRY
STORE, INC., an unknown business entity;
CBOCS WEST, INC., an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Doyle Action
Case No. CIVDS2013220
Filed On: May 29, 2019

Taylor Action
Case No. CIVDS2009214
Filed On: June 1, 2020

Honorable David S. Cohn
Department S26

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF ATTORNEYS'
FEES AND COSTS, SERVICE AWARDS,
AND SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declarations of Plaintiffs' Counsel
(Edwin Aiwazian and Raul Perez);
Declarations of Plaintiffs (Camreen Taylor,
Tony Doyle and Billy Jefferson); and
[Proposed] Order and Judgment filed
concurrently herewith]

Date: June 11, 2021
Time: 10:00 a.m.
Department: S26

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Attorneys for Plaintiffs Tony Doyle and Billy Jefferson

1 **PLEASE TAKE NOTICE** that on June 11, 2021, at 10:00 a.m., or as soon thereafter
2 as the matter may be heard before the Honorable David S. Cohn in Department S26 of the
3 Superior Court of the State of California, for the County of San Bernardino, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiffs Camreen Taylor, Tony Doyle and
5 Billy Jefferson (“Plaintiffs”) will and hereby do move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(l)(2), of the
7 settlement between Plaintiffs and Defendant CBOCS WEST, INC. (“Defendant”) of
8 the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”),
9 as set forth in the PAGA Representative Action Settlement Agreement and Release
10 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**”
11 to the Declaration of Edwin Aiwarzian, including and not limited to, the plan of
12 allocation and distribution of the Gross Settlement Amount for payment of the LWDA
13 Payment to the Labor Workforce and Development Agency (“LWDA”), Individual
14 Settlement Payments to PAGA Settlement Members, Attorneys’ Fees and Costs to
15 Plaintiffs’ Counsel, Settlement Administration Costs to the Settlement Administrator,
16 and Service Awards to Plaintiffs;
- 17 2. Approving the Net Settlement Amount, estimated to be no less than \$366,433.98,
18 which will be distributed to the LWDA and the PAGA Settlement Members, pursuant
19 to California Labor Code section 2699(i), of which seventy-five percent (75%) will
20 be paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid
21 to PAGA Settlement Members;
- 22 3. Appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;
- 23 4. Directing Defendant to deposit the Gross Settlement Amount of \$650,000 into an
24 account for administration of the Settlement, and directing the Settlement
25 Administrator to distribute the Gross Settlement Amount in accordance with the
26 Settlement Agreement;
- 27 5. Directing the mailing of Individual Settlement Payment checks to the PAGA
28 Settlement Members under a cover letter, which is substantially similar in content and

form to the [Proposed] Notice of Settlement of PAGA Representative Action attached as “**EXHIBIT 1**” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, Et Seq.) Settlement Agreement and Award of Attorneys’ Fees and Costs, Service Awards, and Settlement Administration Costs (“Proposed Order and Judgement”) filed concurrently herewith;

6. Awarding \$10,000 each to Plaintiffs Camreen Taylor, Tony Doyle and Billy Jefferson (for a combined total of \$30,000) as Service Awards;
7. Awarding up to \$12,000 to the Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Plaintiffs’ Counsel, Lawyers for Justice, PC and Capstone Law APC, \$227,500 as compensation for reasonable attorneys’ fees and \$14,066.02 for reimbursement of litigation costs and expenses (“Attorneys’ Fees and Costs”), pursuant to California Labor Code section 2699(g)(1).

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiffs’ Counsel (Edwin Aiwarzian and Raul Perez) and Plaintiffs (Camreen Taylor, Tony Doyle, and Billy Jefferson) support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: May 20, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiff Camreen Taylor

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiffs Camreen Taylor, Tony Doyle and Billy Jefferson (“Plaintiffs”) seek approval
4 of the PAGA Representative Action Settlement Agreement and Release (“Settlement,”
5 “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on
6 behalf of the State of California and other PAGA Settlement Members, and Defendant CBOCS
7 WEST, INC. (“Defendant”), pursuant to California Labor Code section 2699(1)(2).¹

8 Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”)
9 have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys
10 General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Gross
11 Settlement Amount of \$650,000.²

12 The Gross Settlement Amount is inclusive of: (1) all Individual Settlement Payments to
13 all persons employed by Defendant as non-exempt employees in California at any time during
14 the period between January 29, 2019 through April 23, 2021 (“PAGA Settlement Members”),
15 (2) payment of 75% of the Net Settlement Amount to the California Labor and Workforce
16 Development Agency (“LWDA”), (3) Attorneys’ Fees and Costs to be paid to Lawyers *for*
17 Justice, PC and Capstone Law APC (“Plaintiffs’ Counsel”), (4) Service Awards to be paid to
18 Plaintiffs, and (5) Settlement Administration Costs to be paid to the Settlement Administrator.³

19 The Net Settlement Amount will be the Gross Settlement Amount less the Court-approved
20 Attorneys’ Fees and Costs, Settlement Administration Costs, and Service Awards, and is
21 currently estimated to be no less than \$366,433.98.⁴ The Net Settlement Amount will be
22 distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and
23 twenty-five percent (25%) to PAGA Settlement Members (“PAGA Distribution Fund”).⁵ Each
24 PAGA Settlement Member will be entitled to payment of a *pro rata* share of the PAGA
25

26 ¹ The PAGA Representative Action Settlement Agreement and Release (“Settlement Agreement”) is attached as
27 “EXHIBIT 1” to the Declaration of Edwin Aiwarzian.

28 ² Settlement Agreement, §§ 1.9 & 4.1.

³ *Ibid.* (See also, §§ 1.19, 1.20, & 1.23).

⁴ *Id.*, §§ 1.13, 1.17, & 4.5.

⁵ *Ibid.*

Distribution Fund, based on the number of pay periods that he or she worked between January 29, 2019 and April 23, 2021 (“Eligible Pay Periods”).⁶

The payment to PAGA Settlement Members will be characterized entirely as Form 1099 income.⁷

Plaintiffs submit that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the Net Settlement Amount (consisting of the LWDA Payment and Individual Settlement Payments), Attorneys’ Fees and Costs, Settlement Administration Costs, and Service Awards. Plaintiffs respectfully request that this Court approve the Settlement, award Attorneys’ Fees and Costs, Settlement Administration Costs, and Service Awards and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendant is an American chain of combined restaurant and gift stores with a southern country theme. Plaintiffs are former employees of Defendant who filed representative actions pursuant to PAGA, on behalf of the State of California and other PAGA Settlement Members of Defendant in California.

Prior to commencing their lawsuits, on January 29, 2020, as required by California Labor Code section 2699.3, Plaintiff Camreen Taylor provided the LWDA with written notice of her intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not respond, and on March 9, 2020, as required by California Labor Code section 2699.3, Plaintiff Tony Doyle and Billy Jefferson provided the LWDA with written notice of their intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not respond.⁸ Prior

⁶ Settlement Agreement, §§ 1.8 & 4.5.

⁷ *Id.*, § 4.5.

⁸ Declaration of Edwin Aiwarzian in Support of Plaintiff’s Motion for Approval of PAGA Settlement Agreement (“Aiwarzian Decl.”), ¶ 10.

1 to commencing her lawsuit, on January 29, 2020, as required by California Labor Code section
2 2699.3, Plaintiff Camreen Taylor provided the LWDA with written notice of her intent to assert
3 claims under PAGA and the basis for those claims, to which the LWDA did not respond.

4 In conformity with the applicable requirements under the PAGA statute, on May 29,
5 2020, Plaintiffs Doyle and Jefferson filed their Complaint – PAGA Enforcement Action in San
6 Bernardino County Superior Court, Case No. CIVDS2013220 (“*Doyle Action*”), and on June 1,
7 2020, Plaintiff Taylor filed her Complaint for Enforcement Under the Private Attorneys General
8 Act, California Labor Code § 2698, Et Seq. in San Bernardino County Superior Court, Case No.
9 CIVDS2009214 (“*Taylor Action*”).

10 Plaintiffs’ core allegations are that Defendant has violated the California Labor Code by
11 engaging in a uniform practice and procedure, with respect to Plaintiff and other PAGA
12 Settlement Members, of, *inter alia*, failing to pay overtime wages, failing to provide compliant
13 meal and rest periods and associated premiums, failing to pay minimum wages during
14 employment, failing to pay timely wages during employment and upon termination of
15 employment, failing to provide complete and accurate itemized wage statements, failing to keep
16 and maintain complete and accurate payroll records, and failing to reimburse necessary business
17 expenses and costs.

18 On July 16, 2020, Defendant filed an Answer to the Plaintiff Taylor’s complaint in the
19 *Taylor Action* and on November 16, 2020, Defendant filed an Answer to Plaintiffs Doyle and
20 Jefferson’s complaint in the *Doyle Action*. Defendant maintained, and continues to maintain,
21 that it had, and continues to have, legally-compliant employment policies and practices
22 throughout the time period at issue. Defendant denies that it ever violated any provision of the
23 California Labor Code, including, but not limited to, those sections for which Plaintiff seeks
24 penalties under the PAGA.

25 On November 20, 2020, the Parties participated in a full-day mediation conducted by
26 Hon. Steven M. Vartabedian (Ret.), a well-respected mediator experienced in mediating
27 complex labor and employment matters. By way of mediation, the Parties were able to reach
28 the Settlement described herein.

Plaintiffs now move for an order granting approval of the Settlement pursuant to California Labor Code section 2699(1)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(1)(2), concurrently with this filing.⁹

III. SUMMARY OF THE SETTLEMENT TERMS

A. PAGA Settlement Members

The PAGA Settlement Members who are covered by the Settlement are:

All persons employed by Defendant as non-exempt employees in California at any time during the period between January 29, 2019 through April 23, 2021.¹⁰

Based on information provided by Defendant, as of November 11, 2020 there are approximately one thousand six hundred sixty-nine (1669) PAGA Settlement Members.¹¹

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$650,000.¹² The Net Settlement Amount will be the Gross Settlement Amount less the following amounts: (1) Attorneys' Fees and Costs, consisting of attorneys' fees of up to \$227,500 and reimbursement of litigation costs and expenses of \$14,066.02 to Plaintiffs' Counsel; (2) Service Awards of up to \$10,000 each to Plaintiffs (for a combined total of \$30,000); and (3) Settlement Administration Costs of up to \$12,000 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator").¹³ The Net Settlement Amount will be fully distributed to the PAGA Settlement Members and the LWDA, as described in Section III.C, *infra*.

C. Distribution of the Net Settlement Amount

Within twenty (20) calendar days of the Effective Date, Defendant will transmit payment of the Gross Settlement Amount to a qualified settlement account established by the Settlement Administrator for administration of this Settlement.¹⁴ Within fifteen (15) calendar days after

⁹ The Court is referred to the concurrently filed Proof of Service, which confirms submission to the LWDA.

¹⁰ Settlement Agreement, §§ 1.18-1.19.

¹¹ Aiwasian Decl., ¶ 9.

¹² *Id.*, §§ 1.9 & 4.1.

¹³ *Id.*, § 1.15.

¹⁴ *Id.*, § 4.7.

the Court's order granting approval of the Settlement, Defendant will provide the Settlement Administrator with a list containing the name, last known address, Social Security number, and Eligible Pay Periods for each PAGA Settlement Member ("PAGA Member Data").¹⁵

Seventy-five percent (75%) of the Net Settlement Amount (or approximately \$274,825.48) will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount (or approximately \$91,608.50) (i.e., the PAGA Distribution Fund) will be distributed to the PAGA Settlement Members on a *pro rata* basis, based on his or her number of Eligible Pay Periods.¹⁶ For each PAGA Settlement Member, the Settlement Administrator will divide the number of Eligible Pay Periods he or she worked by the total aggregate number of Eligible Pay Periods worked by all PAGA Settlement Members, and then multiply the resulting figure by the PAGA Distribution Fund to yield the PAGA Settlement Member's Individual Settlement Payment.¹⁷ The payments to PAGA Settlement Members for their portion of the Employees' Portion ("Individual Settlement Payments") are one hundred percent (100%) penalties to be reported on IRS Form 1099 and will not be subject to local, state, or federal payroll tax withholding.¹⁸

No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator will distribute the Individual Settlement Payments to PAGA Settlement Members and LWDA Payment to the LWDA.¹⁹ The Settlement Administrator will distribute the Individual Settlement Payment checks with a Notice of Settlement of PAGA Representative Action ("Cover Letter"), substantially similar in content and form to the [Proposed] Cover Letter, which is attached as "Exhibit 1" to the [Proposed] Order and Judgment.²⁰ Prior to mailing the PAGA Settlement Package, the Settlement Administrator will use the U.S. Postal Service's National Change of Address ("NCOA") database to locate updated addresses for the PAGA Settlement Members.²¹ For each check and Cover Letter that is returned as

¹⁵ Settlement Agreement, § 3.2.

¹⁶ *Id.*, § 4.5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

undeliverable, the Settlement Administrator will promptly attempt to locate an alternate, updated address for the PAGA Settlement Member, by using single computer skip-trace search and will attempt one (1) re-mailing of the check and Cover Letter.²²

Individual Settlement Payment checks will remain valid for one hundred and eighty (180) calendar days and will thereafter be cancelled.²³ Any funds associated with such cancelled checks will be sent to the California State Controllers Office, Unclaimed Property Fund in the names of such PAGA Settlement Members.²⁴

D. The Scope of the Release in the Settlement Agreement

As of the date of the Court's order granting approval of this Settlement Agreement, Plaintiff, PAGA Settlement Members, and the State of California will be deemed to release and discharge Released Parties from the following claims:

All claims for PAGA civil penalties alleged in the Complaints or could have been alleged based on the facts alleged in the Complaints pertaining to Plaintiffs and the PAGA Settlement Members. This includes, but is not limited to, claims for PAGA civil penalties based on alleged violations of California Labor Code sections 201-204, 206.5, 210, 212, 213, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.5, 1197, 1197.1, 1198, 2800, 2802, 2810.5 and the California Industrial Welfare Commission Wage Orders.²⁵

The "Released Parties" are CBOCS WEST, INC. and its past, present, and future subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries.²⁶

E. No Right to Object to, or Opt Out of, the Settlement

"[A] PAGA action is a statutory action for penalties brought as a proxy for the State," as such, "there is no need to protect absent employees' due process rights[.]" *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. "Unnamed employees need not be given notice of the PAGA

²² Settlement Agreement, § 4.6.

²³ *Ibid*

²⁴ *Ibid.*

²⁵ *Id.*, § 5.1.

²⁶ *Id.*, § 1.25.

claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty PAGA Settlement Members who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially PAGA Settlement Members parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted).

As such, the Settlement is consistent with the law, and there is no requirement that PAGA Settlement Members be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself

1 or herself and on behalf of other PAGA Settlement Members and the State of California to
2 recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect
3 from an employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an
4 employee must comply with California Labor Code section 2699.3. See Cal. Lab. Code §
5 2699(a). Plaintiffs have complied.

6 The settlement of a PAGA action requires court approval. See Cal. Lab. Code §
7 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed
8 pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis
9 . . . is not considered a class action but a law enforcement action” and therefore does not have
10 to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26,
11 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011)
12 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding
13 that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*
14 *PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review
15 of a PAGA settlement involves analysis of several unique features that render the approval
16 process distinct from, and simpler than, the process for approval of a class action settlement. A
17 court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to
18 those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California
19 Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be
20 judged, courts have approved settlements of PAGA claims.²⁷ See, e.g., *Resendez v. Bridgestone*
21 *Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH*
22 *Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May
23 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller*
24 *v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo*
25 *Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D.
26 Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186
27 Cal.App.4th 576, 589.

28 ²⁷ Aiwazian Decl., ¶ 7.

1 In a PAGA case, the court’s focus is not the monetary amount which PAGA Settlement
2 Members or the State stand to receive, but instead, whether the Gross Settlement Amount
3 achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to
4 recover civil penalties for the government that otherwise may not have been assessed and
5 collected by overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010
6 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
7 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
8 education of employers and employees about their rights and responsibilities under this code, to
9 be continuously appropriated to supplement and not supplant the funding to the agency for those
10 purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by
11 way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46
12 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover
13 civil penalties—for Labor Code violations—that otherwise would be sought by state labor law
14 enforcement agencies”); see also *Iskanian, supra*, at 381.

15 A PAGA settlement is a settlement of claims for penalties and other remedies which the
16 LWDA could assess and collect on behalf of employees without their involvement or approval.
17 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
18 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777,
19 at *5. This renders the approval process of a PAGA settlement distinct from a class action
20 settlement, and the Court need not employ the two-step approval process that applies to a class
21 action settlement, under both state and federal law.

22 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

23 The Settlement resulted from hard-fought negotiations, fulfills the objectives of the
24 PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the
25 reasons discussed below.

26 **A. The Factors Giving Rise to a Presumption of Fairness Exist**

27 The Parties reached the Settlement through arm’s-length negotiations, with the
28 assistance of an experienced and respected mediator, Hon. Steven M. Vartabedian (Ret.), at a

1 full-day mediation.²⁸ A settlement that is “the product of extensive and hard-fought adversarial
2 negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple*
3 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

4 The Settlement is presumptively fair because: (1) it is the product of non-collusive,
5 arm’s-length negotiations that were overseen by an independent mediator knowledgeable in
6 complex labor and employment matters; (2) it was negotiated by counsel with significant
7 experience in similar complex labor and employment matters; and (3) it occurred after counsel
8 for the Parties engaged in significant investigation to evaluate the strength and potential value
9 of the PAGA claims, and the risks of litigating these claims through trial.²⁹

10 After engaging in significant informal discovery, the Parties participated in settlement
11 negotiations to try to resolve the lawsuit.³⁰ These efforts included participating in formal
12 mediation conducted by Hon. Steven M. Vartabedian (Ret.), a well-respected mediator
13 experienced in mediating complex labor and employment matters.³¹ During mediation, the
14 Parties discussed all aspects of the case, including the risks and delays of further litigation, the
15 risks to the Parties of proceeding with trial, the law relating to representative PAGA actions,
16 wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of
17 bifurcation of discovery and/or trial and appeals, among other things.³² During all settlement
18 discussions, the Parties conducted their negotiations at arm’s length in an adversarial position.³³

19 Based on all of the information available to the Parties and with the assistance of the
20 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
21 strengths and weaknesses of the PAGA claim.³⁴ Plaintiffs and Plaintiffs’ Counsel believe that
22 the settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiffs’ Counsel
23 has extensive experience handling representative and class action wage-and-hour litigation and
24

25 ²⁸ Aiwazian Decl., ¶ 12.

26 ²⁹ *Id.*, ¶¶ 4-7, 12-14, & 17-21.

27 ³⁰ *Id.*, ¶ 12.

28 ³¹ *Ibid.*

³² *Id.*, ¶ 12.

³³ *Ibid.*

³⁴ *Id.*, ¶ 21.

³⁵ *Id.*, ¶ 29.

used that experience to achieve a great result for Plaintiffs, the State of California, and the PAGA Settlement Members.³⁶ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

B. The Relative Strength of the PAGA Claims and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement

In order for Plaintiffs to prevail on the PAGA claims, they would have to prove the underlying California Labor Code violations, demonstrate that PAGA Settlement Members suffered, and demonstrate that Defendant's conduct gives rise to penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter of law, so does her PAGA claim.").

Plaintiffs' core allegation is that Defendant has systematically violated the California Labor Code, with respect to Plaintiffs and PAGA Settlement Members, by, *inter alia*, failing to properly pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep and maintain complete and accurate payroll records, and failing to reimburse business expenses and costs.

³⁶ Aiwazian Decl., ¶¶ 4-7.

Although wage-and-hour actions are amenable to resolution as to a group of employees³⁷, some courts have also found that, for various reasons, the issues raised by Plaintiffs raise individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.³⁸

Defendant contended that courts have required, and that due process requires, that the adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Liuy v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-l4-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim unmanageable).

³⁷ *See, e.g., Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that “statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and the effect those policies and practices have on the [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs’ overtime claim”); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, “[r]eal parties’ evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties’ theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7.”); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

³⁸ *See, e.g., Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged “that the employer consistently imposed a uniform policy or de facto practice” as to its employees, “the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably” and in litigating representative actions the procedures utilized by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing the defendant’s] presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

1 Defendant also maintained several defenses to Plaintiffs’ theory of liability, which, if
2 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
3 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
4 continues to have, legally-compliant employment policies and practices throughout the time
5 period at issue.³⁹ Defendant denies that it ever violated any provision of the California Labor
6 Code, including, but not limited to, those sections for which Plaintiffs seek penalties under the
7 PAGA.⁴⁰ Defendant further denied, and continues to deny, that the lawsuits are appropriate for
8 representative treatment for any purpose other than settlement.⁴¹

9 Defendant also challenged Plaintiffs’ standing as PAGA Settlement Members and
10 denied that any of Defendant’s other employees whom Plaintiffs seek to represent are
11 aggrieved.⁴² Also, at the time that this case commenced, multiple courts had taken an approach
12 requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery
13 and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001
14 (noting that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful
15 action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at
16 *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent
17 uncertainties of being able to establish liability with respect to a large number of potentially
18 PAGA Settlement Members and noted that “PAGA’s public purpose would be ill-served if the
19 court finds [the plaintiff] has not been aggrieved by a Labor Code violation”); *Horton v. Jones*
20 (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed
21 to avoid wasting time and money on trial when litigation of issues could be rendered moot).

22 Defendant also argued that an important feature of PAGA is that the Court retains
23 discretion to lower the penalties if, based on the facts and circumstances of the particular case,
24 to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or
25 confiscatory.” *See* Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit*

27 ³⁹ Aiwazian Decl., ¶ 19.

28 ⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶ 21.

1 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the
2 amount of PAGA penalties awarded to an employee based upon discretionary factors).
3 Defendant maintained, and continues to maintain, that it had and continues to have, legally-
4 compliant employment policies and practices throughout the time period at issue.⁴³ Defendant
5 denies that it ever violated any provision of the California Labor Code.⁴⁴ Even if, *arguendo*,
6 such violations occurred, which Defendant denies, Defendant contended that said violations
7 would only be considered “initial violations” and thus heightened “subsequent violation”
8 penalties were not warranted. *See* Cal. Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp.*
9 *No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is
10 violating a Labor Code provision [...], the employer cannot be presumed to be aware that its
11 continuing underpayment of employees is a ‘violation’ subject to penalties.”).

12 Defendant also contended that, with respect to PAGA claims, the Court was unlikely to
13 assess cumulative penalties for the maximum number of possible, separate California Labor
14 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory,
15 especially where certain conduct may be regulated by multiple provisions of the California
16 Labor Code that are interrelated and work in tandem. As such, Defendant contended that
17 cumulative penalties and heightened penalties would be unjust, arbitrary, oppressive, and
18 confiscatory.

19 While Plaintiffs maintain that their PAGA claims have merit, in reaching the settlement,
20 Plaintiffs and their counsel took into account the strengths and weaknesses of each side’s
21 position and the uncertainty of how the case might have concluded as litigation continued, at
22 trial, and/or appeals.⁴⁵

23 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation**

24 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
25 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the
26 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and

27 ⁴³ Aiwazian Decl., ¶ 19.

28 ⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶ 22.

expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claims.⁴⁶ Prior to mediation, Plaintiffs’ Counsel conducted informal discovery and the exchange of information.⁴⁷ In addition, the Parties exchanged thousands of pages of documents and data relevant to Plaintiffs’ claims and Defendant’s defenses thereto, including, and not limited to, the employment records of Plaintiffs and other PAGA Settlement Members, sampling of time and pay data, job descriptions, Defendant’s California employee handbook, agreements (including, and not limited to Voluntary Meal Break Waiver and Alternative Dispute Resolution Agreement), checklists, internal memoranda, employee Rules of Conduct, acknowledgments (including, and not limited to Employee-Meal Period/Rest Break Expectations and Acknowledgment-Max Messaging Meal Period and Rest Break Policy), and Defendant’s operations and employment policies, and procedures.⁴⁸ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiffs’ claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁴⁹

Had the cases not settled, the Parties would have conducted extensive formal discovery, including additional written discovery as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate these cases.⁵⁰ Litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵¹ Additionally, there is a real possibility that Plaintiffs would recover nothing, either for themselves or on behalf of the State of California or other PAGA Settlement Members after years of costly and labor-intensive

⁴⁶ Aiwazian Decl., ¶ 13.

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 13 & 22.

⁴⁹ *Ibid.*

⁵⁰ *Id.*, ¶ 19.

⁵¹ *Id.*, ¶¶ 11, 12, 20 & 22.

litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625.

The settlement provides significant benefits to the State of California and the PAGA Settlement Members and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$650,000, which encompasses the Net Settlement Amount, Attorneys’ Fees and Costs, Settlement Administration Costs, and Service Awards.⁵² Subject to approval by the Court, the following amounts will be subtracted from the Gross Settlement Amount to yield the Net Settlement Amount: (1) Attorneys’ Fees and Costs to Plaintiffs’ Counsel in the amount of \$227,500 for attorneys’ fees and \$14,066.02 for reimbursement of litigation costs and expenses⁵³; (2) the Settlement Administration Costs of up to \$12,000; and (3) Service Awards of up to \$10,000 each to Plaintiffs (for a combined total of \$30,000).⁵⁴

The Net Settlement Amount is currently estimated to be \$366,433.98, of which an estimated \$91,608.50 is to be distributed to PAGA Settlement Members on a *pro rata* basis, based their number of Eligible Pay Periods and \$274,825.48 is to be distributed to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

The Settlement is a compromise of highly disputed claims. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to litigate the matter

⁵² Settlement Agreement, §§ 1.9 & 4.1.

⁵³ *Id.*, § 4.2; see also Aiwazian Decl., ¶ 15. Although the Settlement Agreement provides that Plaintiff’s Counsel can seek up to \$15,000 for reimbursement of litigation costs and expenses, Plaintiff’s Counsel only seeks the amount of \$14,066.02 for this payment. The difference between the amount sought and the maximum allocated amount available under the settlement (i.e., the difference of \$933.98), will be a part of the Net Settlement Amount.

⁵⁴ Settlement Agreement, §§ 1.15 & 4.2-4.5; Aiwazian Decl., ¶ 27.

1 through trial and any possible appeals.⁵⁵ Plaintiffs and their counsel have also taken into account
2 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
3 inherent in such litigation.⁵⁶ Plaintiffs and their counsel are also aware of the burdens of proof
4 necessary to establish liability, both generally and in response to Defendant's defenses thereto,
5 and the difficulties in establishing Defendant's liability for, and the right to recover, penalties
6 on behalf of Plaintiffs, the State of California, and other PAGA Settlement Members.⁵⁷
7 Plaintiffs and their counsel have also taken into account Defendant's agreement to enter into a
8 settlement that confers significant relief upon the PAGA Settlement Members and the State of
9 California.⁵⁸

10 Considering all of the facts in these cases, Plaintiffs and their counsel have determined
11 that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims,
12 and that it is in the best interests of the PAGA Settlement Members and the State of California.⁵⁹

13 The result achieved in this case, and the monetary recovery provided by this settlement,
14 are well-within the range of an acceptable settlement under the circumstances, especially when
15 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and*
16 *Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the
17 amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012
18 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
19 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000
20 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
21 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims);
22 *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
23 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no
24 abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the
25 settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for

26 ⁵⁵ Aiwazian Decl., ¶¶ 11, 12 & 22.

27 ⁵⁶ *Id.*, ¶¶ 12, 18 & 22.

28 ⁵⁷ *Id.*, ¶¶ 17 & 18.

⁵⁸ *Id.*, ¶ 22.

⁵⁹ *Id.*, ¶ 29.

settlement of the PAGA claims is very significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of Plaintiffs' Counsel Favor Approval of the Settlement

Plaintiffs' Counsel is highly experienced in complex representative and class action wage-and-hour litigation.⁶⁰ In the view of Plaintiffs' Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State and the PAGA Settlement Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.⁶¹ Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially PAGA Settlement Members are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS' FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Gross Settlement Amount of \$650,000.⁶² The Settlement provides for attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount, which is \$227,500, subject to approval and award by the Court.⁶³ The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiffs' Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiffs' Counsel has shown, (4) the results that Plaintiffs' Counsel has achieved throughout the litigation, (5) the value that Plaintiffs' Counsel has achieved for Plaintiffs, PAGA Settlement Members, and the State of California, and (6) the other cases that Plaintiffs' Counsel has turned down in order to devote time and effort to this matter.

⁶⁰ Aiwazian Decl., ¶¶ 4-7; Declaration of Raul Perez in Support of Plaintiff's Motion for Approval of PAGA Settlement Agreement ("Perez Decl."), ¶¶ 12-14, Ex. 1.

⁶¹ Aiwazian Decl., ¶ 29; Perez Decl., ¶ 6.

⁶² Settlement Agreement, §§ 1.9 & 4.1.

⁶³ *Id.*, § 4.2.

1 Plaintiffs' Counsel is entitled to recover reasonable attorneys' fees and costs as a matter
2 of right under PAGA. See Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any
3 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiffs'
4 Counsel is also entitled to fees and costs under California Code of Civil Procedure section
5 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures
6 monetary recovery for a large number of PAGA Settlement Members, as well as the State of
7 California. See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
8 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant
9 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
10 section 1021.5, regardless of plaintiff's personal motivation). The settlement will also benefit
11 the state labor agency in enforcing labor laws and educating "employers and employees about
12 their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

13 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
14 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
15 confirmed by the California Supreme Court. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
16 480 at 486 & 506. While trial courts have discretion to apply either a lodestar method or
17 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
18 courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate
19 the reasonableness of a requested percentage fee" and "[t]he percentage of fund method survives
20 in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91 Cal.App. 4th at 253.

21 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
22 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
23 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
24 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
25 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

26 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
27 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
28 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506

(holding that “trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request”). Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

The percentage fee method is preferred in representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

Plaintiffs’ Counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. Historically,

1 courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions,
2 depending on the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981)
3 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million Gross
4 Settlement Amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
5 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
6 courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.”
7 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of
8 contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee
9 was appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles
10 County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162
11 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of
12 \$950,000, in a PAGA action, because it was “reasonable and consistent with fee awards in class
13 action cases”).

14 Plaintiffs’ Counsel have, respectively, litigated these cases since they were commenced,
15 with the very real possibility of an unsuccessful outcomes and no fee recovery of any kind.⁶⁴
16 Plaintiffs’ Counsel conducted informal discovery and exchange of thousands of pages of data
17 and documents with Defendant’s counsel.⁶⁵ The data and documents reviewed and analyzed by
18 Plaintiffs’ Counsel included, and was not limited to, the employment records of Plaintiffs and
19 other PAGA Settlement Members, sampling of time and pay data, job descriptions, Defendant’s
20 California employee handbook, agreements (including, and not limited to Voluntary Meal Break
21 Waiver and Alternative Dispute Resolution Agreement), checklists, internal memoranda,
22 employee Rules of Conduct, acknowledgments (including, and not limited to Employee-Meal
23 Period/Rest Break Expectations and Acknowledgment-Max Messaging Meal Period and Rest
24 Break Policy), and Defendant’s operations and employment policies, and procedures.⁶⁶ Counsel
25 for the Parties undertook significant investigation, and also invested time reviewing and
26 analyzing relevant documents and data to evaluate Plaintiffs’ claims, including, and not limited

27 ⁶⁴ Aiwazian Decl., ¶ 27.

28 ⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Ibid.*

to, calculating the potential monetary recovery under PAGA.⁶⁷ Other work performed by Plaintiffs' Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding discovery, mediation, and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending court proceedings, mediation, and settlement negotiations.⁶⁸

In the present cases, Plaintiffs' Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁹ Plaintiffs' Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, PAGA Settlement Members, and the State of California.⁷⁰ Considering the amount of fees requested, work performed, risks incurred, results obtained, and experience of Plaintiffs' Counsel in handling similar matters, Plaintiffs maintain that the requested attorneys' fees are reasonable and should be awarded.

B. The Fee Award Requested by Plaintiffs' Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiffs' Counsel, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

⁶⁷ Aiwazian Decl., ¶ 13.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 27; Perez Decl., ¶ 7.

⁷⁰ Aiwazian Decl., ¶¶ 4-7; Perez Decl., ¶¶ 12-14.

1 It should be highlighted that the percentage award sought is commensurate with the time,
2 effort, and expense dedicated to the cases, the contingent nature of Plaintiffs' Counsel's
3 representation and the risks taken in commencing the Action, the skill and determination
4 required, the results that Plaintiffs' Counsel has achieved, and the value of the settlement that
5 Plaintiffs' Counsel has obtained on behalf of Plaintiff, PAGA Settlement Members, and the
6 State of California. For the reasons discussed herein, an award of attorneys' fees in the amount
7 of thirty-five percent (35%) of the Gross Settlement Amount is reasonable.

8 **1. Time & Labor**

9 Plaintiffs' Counsel has used its experience and skills in litigating complex wage-and-
10 hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
11 Plaintiffs' Counsel conducted a significant amount of investigation into the factual and legal
12 issues, Defendant's business, and its operations and employment policies, practices, and
13 procedures.⁷¹ During the litigation of the Action, Plaintiffs' Counsel interviewed and obtained
14 information from Plaintiffs and PAGA Settlement Members, conducted significant informal
15 discovery, noticed the depositions of Defendant's person most knowledgeable witnesses,
16 conducted legal research, reviewed and analyzed a volume of documents and data, prepared for
17 and attended hearings and mediation, evaluated the PAGA claims, and calculated the potential
18 monetary recovery under PAGA.⁷² Plaintiffs' Counsel also met and conferred with Defendant's
19 counsel over issues relating to the pleadings, discovery, mediation, and settlement.⁷³ Plaintiffs'
20 Counsel performed other work including, *inter alia*, case strategy and analysis; drafting,
21 reviewing, and revising pleadings; and engaging in extensive settlement negotiations.⁷⁴

22 Plaintiffs' Counsel dedicated the full extent of staffing and monetary resources necessary
23 to prosecute the cases with maximum efficiency, and has fully and actively participated in the
24 litigation process. The task and time charts, which are attached as exhibits to the accompanying
25 declarations of Edwin Aiwarzian and Raul Perez, sets forth in detail the hours that Plaintiffs'

26
27 ⁷¹ Aiwarzian Decl., ¶ 13.

28 ⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

Counsel has spent performing tasks in this matter. Collectively, Plaintiffs' Counsel have spent **399.75 hours**, with 224.05 hours spent by Lawyers *for* Justice, PC and 175.70 hours spent by Capstone Law APC, to obtain a recovery on behalf of Plaintiffs, PAGA Settlement Members, and the State of California.⁷⁵ These hours were required to bring the case to its successful conclusion.

In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate these cases is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained highly-respected counsel to represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiffs and Plaintiffs' Counsel believe that the PAGA claims have merit and that Plaintiffs will prevail at trial. Plaintiffs' Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and during the litigation. Plaintiffs' Counsel took steps to prepare the cases for trial and had every intention of taking the cases to trial if Defendant did not offer an appropriate settlement.

Plaintiffs' Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data and information obtained from Defendant, Plaintiffs, and through other sources, evaluate the PAGA claims, and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiffs' Counsel used their extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain PAGA Settlement Members and the State of California a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.⁷⁶

3. The Value of the Settlement

⁷⁵ Aiwazian Decl., ¶ 4-7 & Exh.3; Perez Decl., ¶¶ 8-10.

⁷⁶ Aiwazian Decl., ¶¶ 16-21.

1 The settlement represents an excellent resolution of these lawsuits, given the uncertainty
2 and risks of further litigation.⁷⁷ Had the case not settled, Defendant would have vigorously
3 challenged manageability and liability, and sought a reduction in the amount assessed as
4 penalties. Defendant, however, faced risks too, including and not limited to, the risk of having
5 the Court assess penalties. Additionally, preparing the case for trial would have been
6 extraordinarily expensive for the Parties.

7 At this stage, the settlement is preferred over continued litigation because such resolution
8 saves time and money that would otherwise go to litigation. The risks and expenses of further
9 litigation outweighed any benefit that might have been gained otherwise. The settlement
10 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
11 litigation involving expert discovery, trial preparation, and appellate review of those
12 proceedings. The settlement offers present and considerable monetary relief to the Plaintiffs,
13 the PAGA Settlement Members, and State of California while avoiding additional expense, risk,
14 and delay in obtaining possible further recovery.

15 **4. Whether the Fee Is Fixed or Contingent**

16 The representation provided by Plaintiffs' Counsel has been wholly contingent and
17 Plaintiffs' Counsel took on this matter without knowing whether any recovery would be
18 obtained. Collectively, Plaintiffs' Counsel has invested **399.75 hours** of time to obtain relief
19 on behalf of Plaintiff, PAGA Settlement Members, and the State of California. Plaintiffs'
20 Counsel is also requesting reimbursement of litigation costs and expenses in the amount of
21 \$14,066.02.⁷⁸

22 In this case, Plaintiffs' Counsel has borne all of the risks and costs of litigation and will
23 not receive any compensation until recovery is obtained.⁷⁹ If Plaintiffs' Counsel had not been
24 successful, the time that they have devoted to litigating the case would have been for naught and
25 would not have produced any fee or any reimbursement of costs or expenses. Plaintiffs' Counsel
26 is well-experienced in complex wage-and-hour litigation and used that experience to obtain a

27 ⁷⁷ *Id.*, ¶¶ 17, 18, 22, & 29.

28 ⁷⁸ *Id.*, ¶ 27 & Exh.3; Perez Decl., ¶ 11.

⁷⁹ Aiwasian Decl., ¶ 27.

great result for Plaintiffs, PAGA Settlement Members, and State of California.⁸⁰ The skill and determination that Plaintiffs' Counsel has shown throughout the Actions justify the requested Attorneys' Fees and Costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

5. *The Amount Involved and the Results Achieved*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this case, are considerable. Here, the results achieved, and the recovery obtained on behalf of Plaintiff, PAGA Settlement Members, and the State of California represent a fair and reasonable resolution of this lawsuit. Plaintiffs' Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$650,000, and it is currently estimated that the Net Settlement Amount available for distribution to PAGA Settlement Members and the State of California, as set forth in Part III.C *infra*, is approximately \$366,433.98.⁸¹

6. *The Reputation and Ability of the Attorneys*

Both Lawyers for Justice, PC and Capstone Law APC a recognized class action and complex litigation law firms that employed their attorneys' knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiffs' Counsel has years of wage-and-hour class action and complex litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.⁸²

C. **The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiffs' Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation**

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar

⁸⁰ See Aiwazian Decl., ¶¶ 4-7.

⁸¹ Settlement Agreement, §§ 1.9 & 4.1.

⁸² Aiwazian Decl., ¶ 4-7; Perez Decl., ¶¶ 12-14, Ex. 1.

method to “cross-check” the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); *see also, e.g., Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. Plaintiffs’ Counsel Performed Work for a Reasonable Number of Hours

The reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

As discussed above, these cases were highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of Plaintiffs’ allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that it had facially-compliant employment policies and practices throughout the time period at issue.⁸³ Defendant raised affirmative defenses and denied liability, and the pursuit of these cases involved gathering and analyzing thousands of pages of data and documents from Defendant as well as other sources.⁸⁴ The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiffs’ Counsel has, as a result of its extensive experience in complex wage-and-hour litigation. Long and difficult battles would have followed as these cases moved toward trial, including taking and defending declarant and expert depositions, depositions of person most

⁸³ Aiwazian Decl., ¶ 19.

⁸⁴ *Id.*, ¶¶ 13 & 22.

1 knowledgeable designees, conducting formal discovery, and engaging in extensive motion
2 practice. As Plaintiffs' Counsel geared up for these battles, Plaintiffs' Counsel undertook
3 intense preparation in an attempt to resolve the entire matter through settlement negotiations.

4 Plaintiffs' Counsel had to bring together a volume of data and documents that were
5 produced by Defendant and obtained from Plaintiff, PAGA Settlement Members, and through
6 other sources. Plaintiffs' Counsel conducted extensive review and analysis of these documents
7 and data to strategize and evaluate these cases and engage in settlement discussions.

8 As set forth above in Part VI.B.1 *supra*, attached to the Declarations of Edwin Aiwasian
9 and Raul Perez are task and time charts that set forth in detail the numerous tasks that sets forth
10 in detail the numerous tasks that Plaintiffs' Counsel performed in this matter, and the time
11 required for completing those tasks.⁸⁵ The chart demonstrates that Lawyers for Justice, PC and
12 Capstone Law APC have spent a total of **399.75 hours**, with 224.05 hours spent by Lawyers for
13 Justice, PC and 175.70 hours spent by Capstone Law APC, on these matters. In light of the facts
14 and circumstances of this case, as well as the results Plaintiffs' Counsel has achieved on behalf
15 of Plaintiff, PAGA Settlement Members, and the State of California, Plaintiffs' Counsel has
16 spent a reasonable number of hours on this matter.

17 **2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation**
18 **in Light of Plaintiffs' Counsel's Efforts and Experience**

19 Both California and federal courts recognize that attorneys should be compensated for
20 providing representation on a contingency basis and for taking on the risks associated with said
21 representation, as well as being provided with financial incentives to enforce important rights
22 and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In
23 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
24 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
25 normal hourly rates for winning contingency cases." *See id.*

26 Plaintiffs' Counsel has been actively involved in the prosecution of this case, prior to the
27 commencement of the Actions and all the way up to approval of the settlement, and their
28

⁸⁵ Aiwasian Decl., Exh.3; Perez Decl., ¶¶ 8-10.

dedication to the representation of Plaintiff, PAGA Settlement Members, and the State of California has precluded other employment. Here, Plaintiffs' Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiffs' Counsel was successful in reaching a settlement of \$650,000.

As set forth in the Declarations of Edwin Aiwarzian and Raul Perez, the professional backgrounds and experience of Plaintiffs' Counsel support a reasonable blended hourly rate of compensation of at least \$625 per hour for services provided by Lawyers for Justice, PC and a reasonable blended hourly rate of compensation of at least \$510 for services provided by Capstone Law APC. Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$625 for legal service performed, by courts of this state.⁸⁶ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiffs' Counsel in this matter justify the requested attorneys' fees award.

Applying the blended rate of \$625 per hour to the 224.05 hours expended by Lawyers for Justice, PC and the blended rate of \$510 per hour to the 175.70 hours expended by Capstone Law APC, would place a reasonable value of \$229,569.75, based on lodestar, for the work performed by Plaintiffs' Counsel. However, Plaintiffs' Counsel only seeks attorneys' fees in the amount of \$227,500, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*,

⁸⁶ Aiwarzian Decl., ¶ 26.

24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$61,250 to Plaintiffs’ Counsel.

VII. COSTS TO BE REIMBURSED TO PLAINTIFFS’ COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$15,000. As set forth in the Declarations of Edwin Aiwarzian and Raul Perez, Plaintiffs’ Counsel have collectively incurred a total of \$14,066.02 in litigation costs and expenses.⁸⁷ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁸ The cost savings of \$933.98 will be part of the Net Settlement Amount.⁸⁹ Accordingly, Plaintiffs’ Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$14,066.02 to Plaintiffs’ Counsel.

VIII. THE PROPOSED COVER LETTER TO THE PAGA SETTLEMENT MEMBERS SHOULD BE APPROVED

Although PAGA does not require notice to unnamed PAGA Settlement Members of a settlement, the Parties prepared, and now present for the Court’s consideration and approval, the [Proposed] Cover Letter for transmission to PAGA Settlement Members along with their Individual Settlement Payment checks, substantially in the form attached as “EXHIBIT 1” to

⁸⁷ Aiwarzian Decl., ¶ 20; Perez Decl., ¶ 11.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶ 20.

the [Proposed] Order and Judgment. The Cover Letter informs the PAGA Settlement Members about the Actions and the Settlement. Accordingly, Plaintiffs respectfully request that the Court approve the Cover Letter for transmission to the PAGA Settlement Members at the time of disbursing their Individual Settlement Payments.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed \$12,000. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Payment checks to the PAGA Settlement Members; re-mailing the returned Cover Letter and Individual Settlement Payment checks to any new addresses obtained, and handling inquiries from PAGA Settlement Members regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$12,000 to Simpluris, a necessary third-party for handling the settlement process.

X. THE PROPOSED SERVICE AWARDS ARE FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for Service Awards to be paid to Plaintiffs Camreen Taylor, Tony Doyle, and Billy Jefferson in the amount of \$10,000 each, for a combined total of \$30,000.⁹⁰ The purpose of such an award is to incentivize PAGA Settlement Members to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685,

⁹⁰ Settlement Agreement, § 4.3.

694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); *see also, e.g., Resendez, supra*, Los Angeles County Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiffs contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other PAGA Settlement Members. Plaintiffs gathered and produced relevant documents and information, provided the facts and evidence necessary to attempt to prove the allegations, and discussed their employment with their counsel.⁹¹ Plaintiffs were available whenever their counsel needed them and tried to obtain documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and PAGA Settlement Members.⁹² Additionally, as a part of the Settlement, Plaintiffs have agreed to a broader release of claims than the release of claims that applies to PAGA Settlement Members.

Accordingly, it is reasonable and just for Plaintiffs Camreen Taylor, Tony Doyle, and Billy Jefferson to receive Service Awards in the amount of \$10,000 each (for a combined amount of \$30,000), in addition to the Individual Settlement Payments they will receive as an PAGA Settlement Members.

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⁹¹ Aiwazian Decl., ¶ 28; Declaration of Camreen Taylor (“Taylor Decl.”), ¶¶ 3-4; Declaration of Tony Doyle (“Doyle Decl.”), ¶¶ 3-7; Declaration of Billy Jefferson (“Jefferson Decl.”), ¶¶ 3-7.

⁹² Aiwazian Decl., ¶ 28; Taylor Decl., ¶¶ 3, 4 & 6; Doyle Decl., ¶¶ 3-7; Jefferson Decl., ¶¶ 3-7.

XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiffs respectfully request that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for the LWDA Payment to the LWDA, Individual Settlement Payments to PAGA Settlement Members, Attorneys' Fees and Costs to Plaintiffs' Counsel, Settlement Administration Costs to the Settlement Administrator, and Service Awards to Plaintiffs.

Dated: May 20, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff Camreen Taylor