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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BILL WOOD, an individual, on behalf
of himself, other current and former
aggrieved employees, and the State of
California, as a private attorneys
general,

Plaintiff,

vs.

**BELTMANN GROUP
INCORPORATED** d/b/a **BELTMANN
RELOCATION GROUP**, a Minnesota
corporation; **NORTH AMERICAN
VAN LINES, INC.**, a Delaware
corporation; **CRST SPECIALIZED
TRANSPORTATION, INC.**, an
Indiana corporation; and **DOES 1
through 10**, Inclusive,

Defendants.

) Case No.: 8:20-cv-02092-JLS (ADS)

) **Honorable Josephine L. Staton**

)

)

) **MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION
FOR APPROVAL OF SETTLEMENT
OF THE PAGA AND MOTION FOR
ATTORNEY'S FEES AND COSTS
AND ENTRY OF RULE 68
JUDGMENT**

)

) Hearing:

) Date: October 27, 2023

) Time: 10:30 a.m.

) Courtroom: 8A

)

)

) *[Filed concurrently with Notice of
Renewed Motion; Declaration of J.B.
Twomey in Support of Renewed Motion;
[Proposed] Order and Judgment]*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Bill Wood (“Bill,” “Wood” or Plaintiff”) files this Renewed Motion for Approval of Settlement of the PAGA and Motion for Attorney’s Fees and Costs and Entry of Rule 68 Judgment pursuant to this Court’s August 9, 2023 Order denying Plaintiff’s July 17, 2023 first motion for the same (Docs. 74 – 74-18) without prejudice. (Order, Doc. 84, p. 7.)

Plaintiff and Defendant Beltmann Group Incorporated d/b/a Beltmann Relocation Group (“Defendant” or “Beltmann”) (collectively, the “Parties”) entered into a Settlement Agreement and Release as required by the Order (the “Parties’ Agreement” or “Agreement”). (Order, Doc. 84, p. 7; a true and correct copy of a fully executed version of the Parties’ Agreement is attached as Exhibit (“Ex.”) 1 to the concurrently filed Declaration of J.B. Twomey (“Twomey Decl.”) and incorporated herein.)

The August 9, 2023 Order requested that we broker a settlement that is fair and adequately represents the interests of the absent parties, *i.e.*, the LWDA and the PAGA members. We have.

The PAGA relief in Bill’s action is genuine, meaningful and consistent with the underlying purpose of the PAGA to benefit the public. The relief provided in the Parties’ Agreement, both for the PAGA and Bill’s individual claims, advances PAGA’s interest in augmenting the state’s enforcement capabilities, encouraging compliance with *Labor Code* provisions, and deterring noncompliance further than other agreements previously and properly approved by this Court.

The terms of the Agreement provide that Defendant shall pay a gross Rule 68 Judgment / settlement amount of \$450,000.00. (Ex. 1, p. 1.) \$200,000.00 from the gross \$450,000.00 is to settle all claims under the PAGA (“Gross PAGA Settlement”). (*Id.* at 2.) \$250,000.00 from the gross \$450,000.00 is to settle all Bill’s individual claims, known and unknown (“Bill’s Individual Settlement” or

1 “Plaintiff’s Individual Settlement”). (*Id.* at 4.)

2 The \$450,000.00 gross settlement is 23% of the Total maximum potential
3 recovery (\$1,984,109.79) (“Total MPR”). The \$200,000.00 PAGA settlement is
4 13% of PAGA’s maximum potential recovery (\$1,544,700.00) (“PAGA MPR”).
5 Both in the range worthy of approval. The Parties currently estimate and project that
6 after deduction for claims administration costs, attorney’s fees and costs, the Net
7 PAGA Settlement of approximately \$142,535.00 will be distributed as follows:
8 \$106,901.25 (i.e., 75% to LWDA), and the remaining \$35,633.75 (i.e., 25%)
9 (“PAGA Payment Portion”) among the 55 person(s)/entity(ies) classified as
10 independent contractors who performed deliveries—including final mile deliveries,
11 or other deliveries to destinations that were not necessarily final destinations—for
12 Defendant in the State of California during the PAGA Period (“PAGA Group” or
13 “PAGA Members”)(“PAGA Period” means the period August 26, 2019 through
14 April 5, 2023). (*Id.* at 2.) The PAGA Members will receive a pro rata share of their
15 portion of the Net PAGA Settlement based on the total number of PAGA Pay Periods
16 attributable to that member during the PAGA Period, divided by the 5,149 aggregate
17 PAGA Pay Periods, multiplied by the PAGA Group Payment portion of the Net
18 PAGA Settlement. (*Id.* at 8.) This is a non-reversionary settlement, such that the
19 entire gross settlement amount of \$450,000.00 will be distributed and no remaining
20 amounts, *i.e.*, unclaimed funds, will revert back to Defendant. (*Id.* at 8.)

21 The net \$106,901.25 being delivered to the LWDA to augment its
22 enforcement capabilities is 24% of the Gross Settlement fund. In comparison, six
23 (6) previous PAGA settlements approved by this Court delivered just 2.94% of their
24 aggregate gross settlements to the state; specifically, \$216,750.00 to the LWDA
25 from \$17,178,428.90 gross funds. Bill’s PAGA settlement is delivering nearly 10
26 times the amount to the LWDA using a Gross Settlement that is 2.6% of the gross
27 funds in the other 6 cases (*i.e.*, \$17,178,428.90).

28 The LWDA’s interest has been adequately represented.

1 Following that staggering figure, Bill's PAGA settlement is delivering the
2 PAGA Members an average net PAGA penalty payment of \$647.89, with the highest
3 net PAGA penalty payment being \$1,307.98 for any PAGA Member who worked
4 during each of the 189 weeks during the PAGA Period.

5 Bill's PAGA Members' figures rival the averages derived by the same six (6)
6 cases; respectively, \$633.35 and \$1,469.22, but with a valuable difference. The
7 employees in the six (6) wage and hour classes were members of *both* Rule 23 and
8 PAGA classes. The members of those classes had to release legal rights they
9 held/may have held against the named defendants/released parties, including all their
10 individual claims as specified in the various agreements.

11 That is not true here.

12 In this Agreement, Bill's PAGA Members are only releasing PAGA claims
13 that were, or could have reasonably been brought, based on Bill's TAC and PAGA
14 notice. (*Id.* at 13.) The 54 PAGA Members represented by Bill will receive good
15 value from this action (on par with previous duo Rule 23 and PAGA class
16 settlements approved by this Court) while retaining, and not estopped from pursuing
17 any and all individual claims he/she/they may have against Defendant, or the
18 Released Parties as defined in the Parties' Agreement. (*Id.* at 4, 8.) In fact, one of
19 the other 54 PAGA Members has filed a class action against Defendant. (A true
20 and correct copy of said complaint is attached to Twomey Decl. as Ex. 2 and
21 incorporated herein.)

22 The PAGA Members' interest have been adequately represented.

23 In addition to Bill adequately representing the Absent Parties' interests, Bill's
24 robust Individual Settlement vindicates his rights via relief for his individual claims,
25 while concurrently fulfilling the purpose of the PAGA as his individual settlement
26 should have a deterrent effect upon Defendant and other employers. *See O'Connor*
27 *v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016) (citing
28 the LWDA's guidance with approval).

1 The Parties' Agreement provides genuine and meaningful relief under the
2 PAGA, consistent with the **underlying purposes of the statute to benefit the**
3 **public**, and is fair, reasonable, and adequately represents the Absent Parties'
4 interests. Based thereon, and all information set forth herein, including all
5 supporting documents contemporaneously filed herewith, and documents on file
6 with this Court, Bill respectfully moves this Court for an Order approving the
7 Parties' Agreement and entering Judgment as follows:

- 8 (1) \$200,000.00 for settlement of the PAGA ("Gross PAGA Settlement");
9 (2) 3,465.00 to ILYM Group, Inc. for administration of the PAGA as set forth
10 in the Agreement,
11 (3) \$50,000.00 in attorney's fees;
12 (4) \$4,000.00 in attorney's costs;
13 (5) The remaining \$142,535.00 to be divided between the LWDA and the
14 PAGA Group members pursuant to the Parties' Agreement, thus, PAGA's
15 statute.
16 (6) \$250,000.00 to Plaintiff for settlement of all his individual claims, known
17 and unknown.

18 **II. BACKGROUND AND BRIEF STATEMENT OF RELEVANT FACTS.**

19 Quoting this Court, "The Court detailed the background facts of this action in
20 its July 23, 2021 order granting a motion to dismiss filed by Beltmann. (July 23,
21 2021 Order, Doc. 34.) The Court assumes familiarity with those facts and will not
22 repeat the full discussion here." (August 9, 2023 Order, p. 1.)

23 The Parties met and conferred after the Court's August 9, 2023 Order
24 regarding the requested Settlement Agreement, and this instant motion and agreed
25 that the 8 absent individuals previously referred to as "Non-FMDDs" should be
26 members of Bill's PAGA Group. (Twomey Decl. ¶ 4.) (*Id.*) Accordingly, the
27 PAGA Members are as follows: the 55 individuals who worked during one or more
28 weekly pay period(s) during the 189 calendar weeks between August 26, 2019 and
April 5, 2023 ("PAGA Group" or "PAGA Members"). (*Id.*) 5,149 total weekly pay

1 periods (“WWs” or “PPs”) are attributable to the 55 PAGA Members. (*Id.*)

2 **III. LEGAL STANDARD**

3 Courts “shall review and approve any settlement of any civil action filed
4 pursuant to this part.” *Cal. Lab. Code* § 2699(1)(2). “The proposed settlement shall
5 be submitted to the agency at the same time that it is submitted to the court.” *Id.*

6
7 In 2003, the California Legislature enacted the Private Attorney
8 General Act, *California Labor Code* §§ 2698 *et seq.*, after
9 **declaring: (i) that adequate financing of labor law enforcement**
10 **was necessary to achieve maximum compliance; (ii) that**
11 **staffing levels for state labor law enforcement agencies have**
12 **declined and were unable to keep up with a growing labor**
13 **market; (iii) that vigorous assessment and collection of civil**
14 **penalties provides a meaningful deterrent to unlawful conduct;**
15 **and (iv) that it was therefore in the public interest to allow**
16 **aggrieved employees, acting as private attorneys general, to seek**
17 **and recover civil penalties for Labor Code violations. 2003 Cal.**
18 **Stat. 6629.**

19 *Perez v. ALL AG, Inc.*, 1:18-cv-00927-DAD-EPG) p. 5 (E.D. Cal., July 22,
20 2021). (emphasis added). “An employee plaintiff suing, as here, under the Labor
21 Code Private Attorneys General Act of 2004, does so as the proxy or agent of the
22 state’s labor law enforcement agencies.” *Arias v. Superior Court*, 46 Cal.4th 969,
23 986 (2009). “[T]he employee plaintiff represents the same legal right and interest
24 as state labor law enforcement agencies — namely, recovery of civil penalties that
25 otherwise would have been assessed and collected by the Labor Workforce
26 Development Agency.” *Id.* (citations omitted). Thus, judgment in a PAGA action
27 “binds all those, including nonparty aggrieved employees, who would be bound by
28 a judgment in an action brought by the government.” *Id.*

29 “There is no binding authority identifying the proper standard of review of
30 PAGA settlements to be employed by the court.” *Perez*, 1:18-cv-00927-DAD-EPG)
31 p. 5 (E.D. Cal., July 22, 2021). However, in *O’Connor v. Uber*, the LWDA provided
32 guidance by stressing:

1 It is thus important that when a PAGA claim is settled, the relief
2 provided for under the PAGA be genuine and meaningful,
3 consistent with the **underlying purpose of the statute to benefit**
4 **the public** and, in the context of a class action, the court evaluate
whether the settlement meets the standards of
being ‘fundamentally fair, reasonable, and adequate’ with
reference to the public policies underlying the PAGA.

5 *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016)
6 (*quoting* California LWDA’s comments on proposed PAGA settlement, Doc. 736,
7 pp. 2-3) (emphasis added).

8 “Recognizing the distinct issues presented by class actions, this court is
9 nevertheless **persuaded by the LWDA’s reasoning** in *O'Connor* and therefore
10 adopts its proposed standard in evaluating the PAGA-only settlement agreement
11 now before the court.” *Perez*, 1:18-cv-00927-DAD-EPG) p. 6 (E.D. Cal., July 22,
12 2021) (emphasis added).

13 “Accordingly, the court will approve a settlement of PAGA claims upon a
14 showing that the settlement terms (1) meet the statutory requirements set forth by
15 PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of **PAGA’s**
16 **public policy goals.**” *Id* (emphasis added).

17 18 **IV. ARGUMENT.**

19 20 **1. Wood and the Parties’ Agreement Have Satisfied all Statutory** 21 **Requirements set Forth by PAGA.**

22 On January 28, 2020, Plaintiff’s counsel served Defendant Bill’s PAGA
23 notice via First Class Certified Mail. Twomey Decl. ¶ 5; *see also* Doc. 52-4.) On
24 January 29, 2020, Plaintiff’s counsel submitted Bill’s PAGA notice electronically to
25 the LWDA. (Twomey Decl. ¶ 6.) On April 5, 2023, Plaintiff’s counsel submitted
26 Bill’s Rule 68 Notice of Acceptance electronically to the LWDA as a “Other
27 Response or Document” at: <https://dir.tfaforms.net/311>. (*Id.*) On June 17, 2023,
28 Plaintiff’s counsel submitted Bill’s initial motion for approval of the PAGA

1 settlement to the LWDA as a “Proposed Settlement of PAGA case” at
2 <https://dir.tfaforms.net/315>. (*Id.*) On August 24, 2023, Plaintiff’s counsel submitted this
3 Court’s August 9, 2023 Order electronically to the LWDA as a “Other Response or
4 Document” at: <https://dir.tfaforms.net/311>. (*Id.*) On September 7, 2023, after all
5 parties executed the Parties’ Agreement, Plaintiff’s counsel uploaded the same to the
6 LWDA “Proposed Settlement of PAGA case” at <https://dir.tfaforms.net/315>. (*Id.*)
7 Plaintiff’s counsel certifies that at the same time this motion is filed, he will submit
8 the same electronically to the LWDA as a “Proposed Settlement of PAGA case” at
9 <https://dir.tfaforms.net/315>. (*Id.*) PAGA requires 75% of the civil penalties
10 recovered by an aggrieved employee be allocated to the LWDA, and the remaining
11 25% percent to aggrieved employees. *Cal. Lab. Code* § 2699(i)). The Parties’
12 Agreement in this case allocates the PAGA fund accordingly. (*See Twomey Decl.*,
13 Ex. 1.)
14

15 **2. The Proposed PAGA Settlement is Genuine, Meaningful and**
16 **Fundamentally Fair, Reasonable and Adequate in View of PAGA’s**
17 **Public Policy Goals.**

18 To evaluate the fairness of a proposed PAGA settlement, some courts
19 have considered: ‘(1) the strength of the plaintiff’s case; (2) the risk,
20 expense, complexity, and likely duration of further litigation; (3) the
amount offered in settlement; (4) the extent of discovery completed and
the stage of the proceedings; (5) the presence of government participation;
and (6) the expertise and views of counsel.

21 *Gibson*, 5:20-cv-00318-ODW (SPx), Order Denying, Doc. 43, p. 4 (*quoting Patel v.*
22 *Nike Retail Servs., Inc.*, No. 14-cv-04781-RS, 2019 WL 2029061, at *2 (N.D. Cal.
23 2019) (applying factors set forth in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
24 (9th Cir. 1998)).

25 ///

26 **A. Strength of Plaintiff’s Case**

27 “To determine whether that settlement amount is reasonable, the Court must
28 consider the amount obtained in recovery against the estimated value of the class

claims if successfully litigated.” *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1011 (E.D. Cal. 2019) (citing *Litty v. Merrill Lynch & Co., Inc.*, 2015 WL 4698475, at *9 (C.D. Cal. Apr. 27, 2015) (quoting *Mego* 213 F.3d at 459)).

Bill performed final mile delivery driving services for Defendant using his personal box truck(s), having two (2) axles, measuring twenty-six feet (26’), and weighing roughly 17,000 pounds, making him entitled to overtime wages and meal period and rest and recovery wages during each pay period he was employed. (Wood Decl. ¶ 3-9; Twomey Decl. ¶ 8.) However, Defendant never paid Bill overtime wages, and it never made meal and rest periods available to him, and when it failed to make those periods available to him, it also failed to pay him one hour at his regular rate of pay. (Wood Decl. ¶ 8.) Bill was also required to come out of pocket for his business expenditures. (*Id.* at 11.) Bill has daily trip sheets, driver statements—weekly, and driver statement—details, receipts and carbon copies of all checks he wrote while employed by Defendant. (Twomey Decl. ¶ 8.) This information allowed his counsel to prepare the detailed damage analysis discussed further below. (*Id.*) So too did/has Bill’s recollection of events during his employment. (*Id.*) Bill is also articulate, credible and a good historian. (*Id.*) Where his records will not reach, his credible testimony will. (*Id.*) For instance, regarding his claims for rest period violations. (*Id.*) However, before having the opportunity to present evidence on those matters, he must first successfully navigate Defendant’s challenge to his employment status. He would. (*Id.*)

Independent contractors are not covered by California wage and hour law. *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, 912-13. As to Bill’s claims for unpaid overtime, and meal and rest period violations, subject to significant exceptions, the “ABC” test is used to determine whether a worker is an employee or an independent contractor, and Defendant bears the burden of establishing that A, B and C apply to Bill. *Cal. Lab. Code* § 2775(b); *Dynamex*

1 *Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, 956-57. Defendant will
2 fail to establish B, that Bill performed work that was outside the usual course of
3 Defendant's business. (*Id.* at ¶ 9.) Bill performed work that was exactly Defendant's
4 business. (*Id.*) In fact, Defendant's website claims: "Beltmann Offers the Best Final
5 Mile Delivery Solutions Across the U.S." (*Id.*)
6 (<https://www.beltmann.com/logistics/final-mile-delivery/>). Because Defendant will
7 fail to establish B of the "ABC" test, Bill will be eligible to recover all alleged
8 damages for unpaid overtime, and Defendant's meal and rest period violations.
9 Defendant has argued that Bill and others performing delivery services for it will be
10 subject to the bona fide business-to-business exception. *Cal. Lab. Code* § 2776. This
11 argument would fail as Bill was providing services to Defendant's customers. If the
12 exception does apply, the employment status is governed by *Borello*. No matter.

13
14 Bill's employment status for purposes of recovering on his claims for business
15 reimbursements pursuant to *Labor Code* section 2802 is governed by *Borello*.
16 When the *Borello* test applies, courts look at the defendant's right to control the
17 plaintiff's work and several other secondary factors. *S.G. Borello & Sons, Inc. v.*
18 *Dep't of Indus. Relations* (1989) 48 Cal.3d 341, 350; *Sotelo v. Medianews Grp., Inc.*
19 (2012) 207 Cal.App.4th 639, 656-57; *JKH Enterprises, Inc. v. Department of*
20 *Industrial Relations* (2006) 142 Cal.App.4th 1046, 1064 fn. 14. All factors into
21 account, Bill would be found an employee, not an independent contractor. The same
22 can be said about the PAGA Members he represents, however, that issue is more
23 complex.

24 **c. Maximum Potential Recovery if Successfully Litigated ("MPR").**

25 **1. MPR of PAGA Penalties**

26
27 Based on the information provided by Defendant, 27 of the 55 PAGA
28 Members are directly contracted with Defendant pursuant to a Contractor Operating

1 Agreement and Lease (“COAL”). (Twomey Decl. ¶ 10.) The other 28 PAGA
2 Members were agents, contractors or employees of the of the 27 directly contracted
3 with Defendant. (*Id.*) Hereinafter, the 27 directly contracted PAGA Members are
4 collectively referred to as “27 COALs” and the other 28, collectively as “28 SUBs.”
5 (*Id.*) Based on Bill’s knowledge and experience and his long-time employment with
6 Defendant, he estimates that two-thirds (.67%) PAGA Members were/are driving
7 trucks with gross weight load capacities 26,000 pounds or less, making up 3,433 of
8 the 5,149 WWs at issue (5,149 x .67) (collectively, “Box Trucks Members”). (Wood
9 Decl., ¶ 7.) The other one-third (33.33%) of the PAGA Members were/are driving
10 semi-truck/tractor trailers with gross weight load capacities equal to or greater than
11 26,001 pounds, making up 1,716 of the 5,149 WWs at issue (5,149 – 3,433)
12 (collectively, “Semi-Truck Members”) (Wood Decl. ¶¶ 7.)

13
14 If a *California Labor Code* violation does not provide a specific civil penalty,
15 PAGA establishes the following default civil penalties: . . . if, at the time of the
16 alleged violation, the person employs one or more employees, the civil penalty is
17 \$100 for each aggrieved employee per pay period for the initial violation and \$200
18 for each aggrieved employee per pay period for each subsequent violation. *Cal. Lab.*
19 *Code* § 2699(f). In the PAGA context, a penalty for a “subsequent” violation means
20 not just later in time, but following notice to the employer that it is in violation of
21 the *California Labor Code*. *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157,
22 1209. Plaintiff is not aware of Defendant having received any notice from labor law
23 enforcement agency, making “subsequent” penalties applicable.

24 Based on analysis and review of all information from Defendant, and Wood’s
25 own evidence, Plaintiff’s counsel estimated the PAGA MPR on claims for the failure
26 to overtime, meal period and rest period claims at \$514,900.00 (Twomey Decl. ¶¶
27 11-20), failure to furnish accurate itemized wage statements at \$514,900.00 (*Id.* ¶¶
28 11-19, 21), failure to reimburse business expenses at \$514,900.00 (*Id.* ¶¶ 11-19, 22),

1 and willful misclassification at \$0.00. (*Id.* ¶ 23.) The **total PAGA MPR for the**
2 **PAGA Members is \$1,544,700.00.** (*Id.* ¶¶ 11-23.)

3 4 **2. Bill Total Individual Damages.**

5 Defendant correctly pointed out that Plaintiff's spreadsheets filed with his
6 initial motion mistakenly extended his cell phone reimbursement from February 27,
7 2017 through August 25, 2017, totaling \$921.71 in overcalculation, including
8 prejudgment interest. (*Id.* ¶¶ 7, 25-30.) Accordingly, Bill's individual damages total:
9 \$439,409.79. (*Id.* ¶ 31.)

10 11 **3. Grand Total MPR**

12 The **Total MPR available to Bill individually and the PAGA Group is**
13 **\$1,984,109.79.** The \$450,000.00 settlement makes up 23% of the Total MPR in this
14 action.

15 **c. Stage of Proceedings and Extent of Discovery Completed**

16 Ten (10) days after Wood's TAC more precisely defined the PAGA class, on
17 August 29, 2022, Wood served extensive initial written discovery on Defendant,
18 including interrogatories, requests for admission, and requests for production of
19 documents via e-mail and overnight delivery ("Wood's First Set of Discovery"). (*Id.*
20 ¶ 32.) Defendant responded to Plaintiff's discovery e-mail the same day, inquiring
21 about pursuing private mediation and proposed three mediators. (*Id.* ¶ 33.)

22 Ultimately, the parties agreed to mediating with Michael Young of Judicate
23 West on the first date available for all prospective mediators considered by the
24 parties, January 11, 2023.¹ (*Id.* ¶ 34.) The parties additionally agreed to staying
25 formal discovery; instead, informally exchanging documents/information in
26

27 ¹With mediation unavoidably set after the then current December 30, 2022 mediation
28 completion deadline, the parties filed a Joint Stipulation to Modify Scheduling Order
to Continue Final Pretrial Conference and All Pretrial Deadlines (Joint Stipulation,
Doc. 55.) This Court granted the Joint Stipulation in part (Court Order, Doc. 56.)

1 advance of mediation, and if the mediation proved unsuccessful, Defendant's
2 responses to Wood's First Set of Discovery would be served within 30 days. (*Id.*)

3 In advance of mediation, Defendant produced 1,022 documents correlated
4 with Bill's employment, the total number of Final Mile Delivery Drivers
5 ("FMDDs"), the total number of so called "non-final mile delivery drivers" ("Non-
6 FMDDs"),² and total number of weekly pay periods worked by all FMDDs and Non-
7 FMDDs during the period August 26, 2019 through date of mediation, January 11,
8 2023 ("PAGA Mediation Period"). (*Id.* ¶ 35.) Also, at the offset of this litigation,
9 Bill provided his counsel with hundreds of pages of employment records unique to
10 those informally produced by Defendant. (Wood Decl. ¶ 5.) During the pendency
11 of this litigation, Bill and counsel engaged in dozens lengthy and detailed telephone
12 conversations about, including but not limited to, (a) the nature and conditions of his
13 employment, (b) information regarding the nature and conditions of Wood's former
14 co-FMDDs' employment, (c) status of case, and/or (d) litigation strategies. (*Id.* ¶ 6;
15 *see also* Twomey Decl. ¶ 35.) Bill's counsel also engaged in lengthy and detailed
16 telephone interviews with other of Defendant's FMDDs about, including but not
17 limited to, (a) the nature and conditions of their employment, and (b) information
18 regarding the nature and conditions of their former co-FMDDs' employment.
19 (Twomey Decl. ¶ 35.) Plaintiff's counsel has conducted sufficient discovery to be
20 informed of the strengths and weaknesses of all claims. (*Id.* at 36.) At the January
21 11, 2023 mediation, the parties were unable resolve the case. (*Id.* at 37.)

23 The parties continued arm's length negotiations with the generous and
24 ongoing aid of Mr. Young. (*Id.*) While these negotiations were ongoing, Plaintiff's
25 counsel continued investigating facts regarding surrounding the PAGA members'
26 conditions of employment. (*Id.*) He also created a new work-file, and began
27

28 ² Defendant described Non-FMDDs as, "drivers [that] deliver loads to locations that
may not be the final destination."

organizing information for the prospect of motion for partial summary adjudication as to certain of Bill's claims. (*Id.*) Ultimately, despite numerous calls and lengthy discussions by and through Mr. Young in the couple months following mediation, the negotiations proved unsuccessful. (*Id.*)

With mediation/post-mediation negotiations proving unsuccessful, on March 21, 2023, Wood served Defendant written discovery containing second sets of interrogatories and requests for admission centered on information regarding the PAGA members ("Wood's Second Set of Discovery"). (*Id.* ¶ 38.)

Also on March 21, 2023, Defendant served Wood (a) extensive initial written discovery, and (b) a notice of deposition. (*Id.* ¶ 39.) The next day, on March 22, 2023, Defendant served Wood (a) responses to Wood's First Set of Discovery, and (b) the Rule 68 Offer of Judgment. (*Id.*; *see also* Rule 68 Offer, Doc. 59, at 4-7.) Defendant's responses to Wood's First Set of Discovery included declarations of current and/or former FMDDs: Mark Gochenour; Amit Sharma; and Roberto Munoz. (Twomey Decl. ¶ 40; *see also* the true and correct copies of the Gochenour Decl., Sharma Decl. and Munoz Decl. attached to Twomey Decl. as Exhibits 4, 5 and 6 respectively, and incorporated herein.)

On April 5, 2023, Wood filed a Notice of Acceptance of the Rule 68 Offer of Judgment, identifying the filing of Bill's initial motion. (Doc. 59, at 2:22-28.) On June 17, 2023, Bill filed his initial motion for approval of the PAGA settlement. (Docs. 74 – 74-18.) On August 9, 2023, this Court denied Bill's motion. (Doc. 84.) On September 7, 2023, the Court issued an Order continuing the pretrial conference to December 1, 2023. (Doc. 86.)

d. The Risk, Expense, Complexity of Further Litigating This Case

Regarding Plaintiff's counsel's perception regarding the strength of Bill's claims (*see* Order, Doc. 84, pp. 6-7), by using "always" Plaintiff's counsel did not

1 mean the beginning of time. What was meant, and could have been stated better
2 than the summarily “always,” is after a thorough and complete investigation of all
3 the strengths and weaknesses, in law and in fact, pertaining to all claims in Bill’s
4 case, it is his perception that Bill’s individual claims are stronger than the PAGA
5 claims. (Twomey Decl. ¶ 42.)

6 Because Wood’s counsel perceives Bill’s individual claims to be stronger than
7 the representative PAGA claims, it is does not go that we have not “vigorously
8 prosecuted the PAGA claims on behalf of the LWDA and the PAGA class
9 members.” (August 9, 2023 Order, Doc. 84, pp. 6-7.) (*Id.* ¶ 43.) In fact, it would
10 be more logical to conclude the exact opposite, and in fact, the reality in this case:
11 that the overwhelming majority of Plaintiff’s counsel and Bill’s time has been spent
12 investigating, analyzing, pursuing and bolstering the PAGA claims. (*Id.*) And we
13 triumphed. The LWDA is recovering \$106,901.25 in net proceeds, the PAGA
14 Members are receiving net penalty payments in-line with duo Rule 23 and PAGA
15 claims, while retaining their rights to pursue their non-PAGA individual claims.
16 (E.g., Ruiz Class Action, Ex. 2.)

17 Plaintiff’s counsel’s assessment of the PAGA claims (and all claims) was/is
18 based on, *inter alia*, (a) counsel’s experience practicing wage and hour law
19 exclusively for the last 7 years, and (b) the vast and detailed legal research, damage
20 analysis and factual assessment conducted in this Action. (*Id.* ¶ 44.) It is correct
21 based on the risks, uncertainties and complexities associated with the prospect of a
22 freestanding manageability requirement for the PAGA claims. First, the law is in
23 flux and the split in authority has the question of manageability applying to PAGA
24 claims before the Supreme Court of California.³ A ruling that finds a freestanding
25

26
27 ³ This Court saved the manageability issue for a later stage of this Action and noted
28 the flux in the law as to whether courts have inherent authority to ensure that claims
under [PAGA] will be manageable (Order, Doc. 51, p. 5; n. 1) (*citing Estrada v.*
Royalty Carpet Mills, 511 P.3d 191 (2022).) As of this writing, the California

1 manageability requirement for PAGA claims delivers the following risks and
2 complexities in this Action: (1) analysis of the manageability requirement to the
3 threshold issue of employment status, which includes application of the (a) ABC
4 test, and its exceptions, to the PAGA Members' that were directly contracted with
5 Defendant, but only for their claims based on IWC Wage Orders (here, overtime,
6 meal and rest periods, and wage statements), (b) *Borello* test to (i) the directly
7 contracted PAGA Members' claims based on the *California Labor Code* (here,
8 business reimbursements pursuant to Section 2802), and (ii) all claims for any
9 directly contracted PAGA Member who is subject to one of the ABC test's
10 exception, and finally, (c) the joint employer theory of recovery as for the 28 SUBs
11 who were agents of the 27 COALs.

12 Further litigation would have exposed Plaintiff's PAGA claims to significant
13 risks, including Defendant continuing and expanding its efforts of striking Wood's
14 PAGA claims by arguing a freestanding manageability requirement applies to the
15 threshold issues of employment status and joint employer liability, and if the PAGA
16 claims survive the threshold attacks, Defendant would level its scope and renew
17 these arguments as applying to the merit and damage assessments. (*Id.* ¶ 45.) The
18 Court reserved the manageability issues for after the fact discovery cutoff, which
19 was scheduled just twenty-three (23) days beyond the day he accepted the Rule 68
20 Offer, *i.e.*, April 28, 2023. (Modified Scheduling Order, Doc. 56, p. 2.) Defendant
21 has argued the individualized inquires required by the preceding aspects of Wood's
22 PAGA claims would overwhelm the common issues/proof, if any. (*Id.*) Despite
23 Wood's confidence that a workable trial plan could have been brokered between and
24 among the Parties and this Court, thus, extinguishing the manageability issues, the
25 risk of assuming Defendant's costs were Bill to recover less than Defendant's Rule
26 68 Offer of Judgment was too great. (*Id.*) Especially given the risk that something
27

28

Supreme Court has not issued a ruling in the *Estrada* matter.

1 less than the Rule 68 Offer, included the PAGA claims being stricken before trial,
2 in which case, the PAGA Members and LWDA would have recovered *zero, ziltch,*
3 *nothing.* (*Id.*)

4 Even if the PAGA claim were to avoid the manageability risks, further risks
5 to recovery of PAGA penalties loom in the event(s) further/additional PAGA
6 members attest to conditions/characteristics of employment similar to, or exactly as,
7 detailed in Gochenour, Sharma and Munoz's declarations. (Exs. 4-6.) It appears a
8 reasonable juror could review these declarations, executed under the penalty of
9 perjury, and find Gochenour, Sharma and Munoz to be/have been independent
10 contractors, thus, ineligible for any recovery. (*Id.*; *see also* Twomey Decl., e.g., Ex.
11 3, Gochenour Decl. ¶¶ 2, 6, 7, 10-14.) Also, there are generally applicable risks to
12 recovery of PAGA penalties with the Court having ultimate discretion to reduce
13 penalties pursuant to Section 2699(e)(2), e.g., *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
14 1030 (N.D. Cal. 2016).

15
16 Defendant's Rule 68 Offer introduced significant risk to Bill given if he had
17 declined the offer and ultimately obtained a judgment not more favorable than
18 \$450,00.00, he would be required to pay Defendant's costs incurred after the offer
19 was made. *Fed. R. Civ. P.* 68(d). Bill assuming Defendant's recoverable costs of
20 suit post-offer presented a tremendous risk; indeed, a risk he would burden alone
21 despite a portion of his case seeking penalties for his former co-workers and the State
22 of California based on PAGA Claims with threshold manageability issues as to
23 misclassification and joint employer theories, as well as, secondary manageability
24 issues as to the merits. (*Id.* ¶ 47.)

25 But the Rule 68 risk, and prospect of *zero, ziltch, nothing* is in the rear-view
26 mirror. And before us are incredible results: \$106,901.25 to the LWDA for
27 financing California's labor law enforcement agencies, and the PAGA Members
28 receiving \$647.89 net average payments. The money to the LWDA dwarfs most

1 PAGA claim payouts to the LWDA, and the net average payment to Wood’s PAGA
2 members exceeds many recoveries for members of *both Rule 23 and PAGA classes*,
3 *and*, unlike those members, Bill’s PAGA Members maintain their rights to pursue
4 any and all of their individual claims. (*E.g.*, Ruiz Class Action, Twomey Decl. Ex.
5 2.)

6 **d. Amount Offered in Settlement and Experience and Views of Counsel**

7 The recommendation of counsel—who are most closely acquainted with the
8 facts of the underlying litigation—is to be considered. *DIRECTV*, 221 F.R.D. at
9 528 ; *see also Turk v. Gale/Triangle, Inc.*, 2017 WL 4181088, at *3, 2017 U.S. Dist.
10 LEXIS 154631, at *7 (E.D. Cal. Sept. 21, 2017) ; *West v. Circle K Stores, Inc.*, 2006
11 U.S. Dist. LEXIS 76558, at *17–18 (E.D. Cal. Oct. 19, 2006). This is because
12 “[p]arties represented by competent counsel are better positioned than courts to
13 produce a settlement that fairly reflects each party’s expected outcome in the
14 litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *but*
15 *see Smith v. American Greetings Corp.*, 2016 WL 2909429, *5 n.5 (N.D. Cal. May
16 19, 2016).

17 Defendant’s Rule 68 Offer was \$450,000.00. Bill accepted. The Parties have
18 now reached an agreement to settle Bill’s PAGA claims for \$200,000.00. The
19 amount settling Bill’s PAGA claims equals 44% of the gross settlement fund, and
20 13% of PAGA’s MPR. Plaintiff’s counsel believes the results achieved in this
21 settlement are exceptional based on reviewing six (6) of this Court’s previous orders
22 properly approving Rule 23 *and* PAGA class settlements in the wage and hour
23 context.⁴
24

25
26 ⁴ Plaintiff’s counsel did not cherry-pick these cases. He uses these six (6) cases
27 because they were the only PAGA cases (aside from *Yong-hui Chen*) he was able to
28 pinpoint from this Court with an order approving a PAGA settlement. He is sure
more exist, but exhausted all of his immediate and reasonable resources in finding
these. Plaintiff’s counsel has also analyzed and read dozens if not a hundred or more

1 In *Navarrete* Case No. 8:19-cv-00794-JLS-ADS (C.D. Cal.), this Court
2 approved a gross class and PAGA settlement totaling \$2,750,000.00, with
3 \$75,000.00 reserved for the LWDA, and an average class member payment of
4 \$320.16 (among the 5,984 members). (Final Approval Order, Doc. 62, p. 3; Prelim
5 Approval Order, Doc. 43, p. 3; Dec. of Sett. Admin, Doc. 44-4, p. 4.) (True and
6 correct copies of the caption page and all cited pages are attached to Twomey Decl.
7 as Ex. 7 and incorporated herein, relevant portions highlighted for the Court's ease
8 (and the same is true for other five (5) cases all within Ex. 7.) In *Scott v. HSS, Inc.*,
9 Case No. 8:14-cv-01911-JLS-RNB (C.D. Cal.), this Court approved a gross class
10 and PAGA settlement totaling \$750,000.00, with \$18,750.00 reserved for the
11 LWDA, and an average class member payment of \$226.82 (among the 2,512
12 members). (Final Approval Order, Doc. 83, pp. 3, 6.) In *Sarabia v. Richo Inc.*, Case
13 No. 8:20-cv-0218-JLS-KES (C.D. Cal.), this Court approved a gross class and
14 PAGA settlement totaling \$1,000,000.00, with \$22,500.00 reserved for the LWDA,
15 and an average class member payment of \$1,119.00 (among the 500 members).
16 (Final Approval Order, Doc. 98, p. 3.) In *Dynabursky v. Alliedbarton Security*
17 *Services, LP et al.*, Case No. SACV 12-02210 JLS (RNBx) (C.D. Cal.), this Court
18 approved a gross class and PAGA settlement totaling \$11,000,000.00, with
19 \$37,500.00 reserved for the LWDA, and an average class member payment of
20 \$174.01 (among the 43,893 members). (Final Approval Order, Doc. 138, pp. 4-5.)
21 In *Correa v. Zillow, Inc.*, Case No. 8:19-cv-00921-JLS-DFM (C.D. Cal.), this Court
22
23

24 other cases and orders approving PAGA settlements. Instead of cherry-picking other
25 cases, and based on his conclusion that this Court's orders are in-line with the general
26 population of PAGA orders, it seemed best to utilize cases with which this Court is
27 assuredly familiar. *Yong-hui Chen*, a Rule 23 class for employment discrimination,
28 not wage and hour, with added PAGA. *Yong-hui Chen v. Western Digital Corporation, et al.*, Case No. 8:19-cv-00909-JLS-EFM (C.D. Cal. January 5, 2021), Final Approval Order, Doc. 90, pp. 4-5 (approving \$7,750,000.00 gross settlement with \$75,000.00 reserved for the LWDA (*i.e.*, 1% of gross)).

approved a gross class and PAGA settlement totaling \$1,100,000.00, with \$30,000.00 reserved for the LWDA, and an average class member payment of \$1,925.22 (among the 300 members). (Final Approval Order, Doc. 52, p. 2; Memo. In Support Prelim. Approval, Doc. 33-1, p. 12.) In *Song v. THC -- Orange County*, 8:17-cv-00965-JLS-DFM (C.D. Cal.), this Court approved a gross class and PAGA settlement totaling \$440,000.00, with \$33,000.00 reserved for the LWDA, and an average class member payment of \$34.92 (among the 5,247 members). (Final Approval Order, Doc. 72, pp. 3-4.)

In the tables below, “Gross” means the gross class and PAGA settlement, “LWDA” means what was paid to the “LWDA” from Gross, “Avg. Net Pay” means the average class member payment, and “LWDA’s %” means the percentage the LWDA’s payment was of the gross class and PAGA settlement, and “Waiver” means was the class required to waive their non-PAGA, individual legal rights pursuant to the parties’ agreement.

<u>Case Name</u>	<u>Gross</u>	<u>LWDA</u>	<u>Avg. Net</u>	<u>LWDA’s %</u>	<u>Waiver</u>
<i>Navarrete</i>	\$2,750,000	\$75,000	\$320.16	2.7%	Yes
<i>Scott</i>	\$888,428.90	\$18,750	\$226.82	2.1%	Yes
<i>Sarabia</i>	\$1,000,000	\$22,500	\$1,119.00	2.3%	Yes
<i>Dynabursky</i>	\$11,000,000	\$37,500	\$174.01	0.3%	Yes
<i>Correa</i>	\$1,100,000	\$30,000	\$1,925.22	2.7%	Yes
<i>Song</i>	\$440,000	\$33,000	\$34.92	7.5%	Yes
Average	\$2,863,071.48	\$36,125	\$633.35	2.94%	Yes

<u>Case Name</u>	<u>Gross</u>	<u>LWDA</u>	<u>Avg. Net</u>	<u>LWDA’s %</u>	<u>Waiver</u>
<i>Bill Wood</i>	\$450,000	\$106,901.25	\$647.89	24%	No
Average	\$2,863,071.48	\$36,125.00	\$633.35	2.94%	Yes

Difference	\$2,413,071.48	\$70,776.25	\$14.54	21%	<i>(See Ex. 2.)</i>
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Despite these cases having an average gross fund that is \$2,413,071.48 more than Bill's case, Bill is paying the LWDA nearly two (2) times the average they deliver. Moreover, Bill's average net PAGA member payment is \$14.54 higher than the cases' average despite Bill's PAGA members not waiving their individual legal rights. Bill and his counsel have brokered a settlement that is undoubtedly fair to the absent parties and adequately represents their interests.

[I]f the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.

O'Connor v. Uber Techs., Inc. (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1134-35

"A PAGA plaintiff "owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general" *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1134.

Bill has also benefitted from this case, but as made clear by the value tables above, his benefit was not to the detriment of the Absent Parties, nor was the PAGA used as a bargaining chip. Bill is recovering a portion of the very real and large damages that he pursued alongside his PAGA in this action. Bill's settlement is robust, but concurrently fulfills the purposes of the PAGA by providing fair compensation to the PAGA (*only*) class members, **and the LWDA**, thus, vindicating their rights.

Bill is a robust class of one (1), and zealous Private Attorney General.

///

///

1 **d. Presence of Government Participation.**

2 Under the PAGA, “[t]he proposed settlement [must be] submitted to the
3 [LWDA] at the same time that it is submitted to the court.” *Cal. Lab. Code* §
4 2669(k)(2). The lack of objection from the LWDA despite being provided timely
5 notice of the terms of a proposed settlement weighs in favor of approving the
6 settlement. *See e.g., Perez v. All Ag, Inc.*, 1:18-CV-00927-DAD-EPG, 2021 WL
7 3129602, *7 (E.D. Cal. July 23, 2021). Plaintiff’s counsel submitted the Parties’
8 Agreement to the LWDA on September 7, 2023. (Twomey Decl. ¶ 6.) Moreover,
9 the same time Bill filed this instant Motion, including the Parties’ Agreement,
10 Plaintiff’s counsel submitted the same to the LWDA electronically. (*Id.*) Bill also
11 submitted his First Motion to the LWDA. (*Id.*) As far as Plaintiff is aware, the
12 LWDA did not seek to intervene or otherwise object to his First Motion. Given the
13 instant Renewed Motion increases the funds going to the LWDA and the PAGA
14 Members, it seems unlikely the LWDA will intervene or object.
15

16 **E. THIS COURT SHOULD APPROVE BILL AND PAGA’S COUNSEL’S**
17 **REQUEST FOR TWENTY-FIVE PERCENT 25% OF ATTORNEY’S**
18 **FEES FROM THE GROSS PAGA SETTLEMENT.**

19 Plaintiff’s counsel’s attempt to waive attorney’s fees in Bill’s initial motion
20 was in good faith. As made clear in this motion, Plaintiff’s counsel did vigorously
21 prosecute Bill’s PAGA claims, and delivered excellent results for the Absent Parties.
22 Plaintiff’s counsel does desire to be compensated for his putative services. (Twomey
23 Decl. ¶ 51.) Plaintiff’s counsel graduated from Southwestern Law School in 2013
24 and has nearly ten (10) years of experience practicing employment law. (*Id.* ¶ 52
25 hereinafter unless stated otherwise.) Upon graduation, he worked as an associate
26 attorney at a labor and employment firm, originating its entire book of wage and
27 hour cases. Seven (7) years ago, he started his solo law practice and to date work as
28 a solo-practitioner; in the truest sense of the term. Since originating his former

1 employer's entire book of wage and hour cases, he has been/currently is the lead
2 attorney and/or 2nd chair and/or co-counsel in at or around 100 wage and hour cases,
3 including complex litigation, including dozens of which contained representative
4 PAGA claims, as well as, one previous class action case, and one current class action
5 case (based on his clients' PAGA cases being related/consolidated with those class
6 cases). His efforts have resulted in millions of dollars in recovery for his clients and
7 PAGA/class members. PAGA allows a prevailing plaintiff to recover attorney fees
8 and costs. *Cal. Lab. Code* § 2699(g). The California Supreme Court has held that
9 attorneys' fees in common fund wage and hour class action settlements should start
10 with the percentage method. *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016).
11 "[C]ourts have an independent obligation to ensure that the award, like the
12 settlement itself, is reasonable, even if the parties have already agreed to an amount."
13 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

14
15 District courts in the Ninth Circuit approving class and representative
16 settlements "typically calculate 25% of the fund as the 'benchmark' for a reasonable
17 fee award, providing adequate explanation in the record of any 'special
18 circumstances' justifying a departure." *In re Bluetooth Headset Prods. Liab. Litig.*,
19 654 F.3d 935, 942 (9th Cir. 2011).

20 Hourly rates set forth in the Laffey Matrix provide further support for my
21 hourly rates. The Laffey Matrix is an attorneys' fee matrix developed in *Laffey v.*
22 *NW. Airlines, Inc.* The LSI Laffey Matrix, relies on the Legal Service Index of the
23 Bureau of Labor Statistics, provides national legal rates adjusted for inflation rather
24 than local and generalized cost data. *Laffey v. NW. Airlines, Inc.*, 572 F. Supp. 354,
25 371 (D.D.C. 1983); *see also* LSI Laffey Matrix, available at
26 <http://www.laffeymatrix.com/see/html>. Federal courts in the Ninth Circuit have
27 found that hourly rates determined using the Laffey Matrix "are reasonable and
28 commensurate with those charged by attorneys with similar experience in the

1 market.” *See Kumar v. Salov N. Am. Corp.*, Case No. 14-cv-2411- YGR (N.D. Cal.
2 July 7, 2017). (A true and correct copy of the Laffey Matrix, which can be
3 found at www.laffeymatrix.com/seehtml is attached to Twomey Decl. as Ex. 8 and
4 incorporated herein.) Additionally, prior rates approved for Plaintiff’s counsel
5 should be adjusted upward for inflation based on their current billing rates. *Stetson*
6 *v. Grissom*, 821 F. 3d 1157, 1166 (9th Cir. 2016).

7 Plaintiff’s counsel’s current rate is \$650.00 per hour. Plaintiff’s counsel’s rate
8 is consistent with the legal markets for attorneys who manage complex cases.
9 Another Court in the Central District approved of Plaintiff’s counsel’s \$650.00 per
10 hour rate when awarding forty percent (40%) of the common fund in a PAGA
11 settlement. (A true and correct copies of the relevant portions of the docket are
12 attached to Twomey Decl. as Ex. 9 and incorporated herein.)

13 According to the Laffey Matrix, Plaintiff’s counsel’s current hourly rate could
14 be \$733.00. Plaintiff counsel’s hourly rate is lower than the Laffey Matrix rate, let
15 alone the rate adjusted upward by 9% and, thus, is reasonable and should be
16 approved. Furthermore, Defendant does not oppose the request for attorney’s fees
17 in an amount not greater than the Ninth Circuit’s “benchmark” rate of twenty-five
18 percent (25%). (Agreement, Ex. 1, p. 3-4.)

19 Plaintiff’s counsel also provides this Court his timekeeping records for
20 purposes of a lodestar cross-check. (A true and correct copy of Plaintiff’s counsel’s
21 timekeeping records in this matter are attached to Twomey Decl. as Ex. 10 and
22 incorporated herein.) District courts in the Ninth Circuit have applied the lodestar
23 method in evaluating attorneys’ fees in PAGA settlements. *See, e.g., Ramirez v.*
24 *Benito Valley Farms, LLC*, 2017 WL 3670794 at *6 (N.D. Cal. Aug. 25, 2017);
25 *Jordan v. NCI Group, Inc.*, 2018 WL 1409590 at *4 (C.D. Cal. Jan. 5, 2018). *See*
26 *also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F. 3d 539, 571 (9th Cir. 2019).

27 Moreover, the Court’s August 9, 2023 Order identified none of the filings
28

1 associated with the initial motion disclosing the percentage of Bill's individual
2 award his counsel is entitled. (August 9, 2023 Order, Doc. 84, p. 3.) Bill has
3 authorized this counsel to inform the Court that the agreement is for Bill to pay his
4 counsel a contingency fee equal to 25% of Bill's award. (Wood Decl. at 14) (*Id.*)
5 Plaintiff's counsel's lodestar of \$163,974.17 exceeds the aggregate of his agreed
6 upon fees from Bill's recovery, and the fees that he is requesting be awarded by this
7 Court from the Gross PAGA settlement, *i.e.*, \$112,500.00. (*Id.*)

8 Plaintiff's counsel took this case on a contingency basis, and for the majority
9 of this case, has therefore incurred the full brunt and risk of fronting all litigation
10 costs and performing all necessary duties without promise of recovery, and has not
11 received any payment on this case since being retained more than three and one-half
12 (3.5) years ago. (*Id.*) Plaintiff's counsel is the only attorney, and sole full-time
13 employee of his firm Twomey Law, P.C. Maintaining a more than three-year
14 litigation against large and respected firm(s), employing highly skilled and
15 competent counsel, has inevitably resulted in Plaintiff's counsel rejecting other
16 work. (*Id.*) Plaintiff's counsel believes the results achieved in this case more than
17 justify an award equal to 25% of the gross PAGA settlement, and therefore,
18 respectfully requests that this Court approve his request for attorney's fees equal to
19 25% of the Gross PAGA settlement. (*Id.*)

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22 **F. THIS COURT SHOULD APPROVE WOOD'S COUNSEL'S**
23 **REQUEST FOR A PORTION OF HIS OUT-OF-POCKET COSTS BE**
24 **REIMBURSED FROM THE GROSS PAGA SETTLEMENT.**

25 "Attorneys may recover their reasonable expenses that would typically be
26 billed to paying clients in non-contingency matters." *In re Omnivision*, 559 F. Supp.
27 2d at 1048. Plaintiff's counsel has documented his expenses incurred in prosecuting
28 and resolving this action; specifically, \$9,093.94 as follows: (a) \$32.00 PAGA notice
mailing (to 4 entities, only top mailing scanned); (b) \$75.00 PAGA filing fee; (c)

1 \$135.64 chambers copies fee; (d) \$79.27 postage; (e) \$8,375.00 mediation fee; (f)
2 \$92.53 postage; (g) \$171.00 chambers copy fee; and (h) \$133.50 chambers copies
3 fee. (A true and correct copy of the receipts are attached to Twomey Decl. as Ex.
4 11 and incorporated herein.) (Twomey Decl. ¶ 53.) The amount is less than the
5 \$9,300.00 identified in the initial motion because upon my detailed accounting costs,
6 I realized the other costs making up the \$9,300.00 were costs incurred in the initial
7 action Bill filed against Beltmann in June 2020. (*Id.*) Plaintiff's counsel did not
8 include those costs in this request. Plaintiff's counsel respectfully requests
9 \$4,000.00, or roughly 44% of the \$9,093.94 costs be reimbursed from the PAGA
10 Gross settlement as that settlement accounts for 44% of the Gross Settlement
11 (\$200,000.00 / \$450,000.00).

12 **G. CONCLUSION.**

13 Plaintiff respectfully requests this Court approve this Renewed Motion for
14 Approval of the PAGA Settlement and Motion for Attorney's fees and costs and
15 Entry of Rule 68 Judgment.
16

17 Respectfully submitted.
18

19 Dated: September 8, 2023

TWOMEY LAW, P.C.

21 /s/ J.B. Twomey
22 J.B. Twomey
23 Attorney for Plaintiff,
24 BILL WOOD
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