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7 Attorneys for Plaintiff Teresa Alexander, on behalf of herself and all “aggrieved employees”
8 pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**
11

12 TERESA ALEXANDER, on behalf of
herself and all “aggrieved employees”
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 CAREER SYSTEMS DEVELOPMENT
CORPORATION, a Delaware Corporation
17 and DOES 1 through 10, inclusive,

18 Defendants.
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Case No. 34-2020-00278027

Assigned to the Hon. Richard K. Sueyoshi, Dept. 53

**NOTICE OF MOTION AND MOTION FOR
AN ORDER APPROVING SETTLEMENT OF
CLAIMS BROUGHT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, AWARDING ATTORNEYS’ FEES,
COSTS, GENERAL RELEASE PAYMENTS,
AND REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: September 28, 2022

Time: 1:30 p.m.

Dept.: 53

Reservation No.: 2661792

Complaint Filed: May 6, 2020

PLEASE TAKE NOTICE THAT on September 28, 2022 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department 53 of the above-entitled Court, located at 813 6th Street, Sacramento, California 95814, Plaintiff Teresa Alexander will and hereby does move unopposed for an Order: (1) granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) set forth in the parties’ PAGA Settlement Agreement (the “Settlement” or “Settlement Agreement”); (2) appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the Settlement Administrator and approving payment of its fees not to exceed \$10,000 from the Maximum Settlement Amount; (3) directing disbursement of the Maximum Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys’ fees and litigation costs from the Maximum Settlement Amount not to exceed \$432,479 to Counsel for Plaintiffs; (5) directing general release payments from the Maximum Settlement Amount in the amount of \$25,000 each to Plaintiffs Teresa Alexander, Central Williams, and Precious Thomas; and (6) entering Judgment consistent with the Settlement Agreement.

This motion will be based on this Notice, the supporting memorandum of points and authorities, the parties' PAGA Settlement Agreement, the Declarations of Daniel F. Gaines, Max W. Gavron, Plaintiff Teresa Alexander, Plaintiff Centrial Williams, and Plaintiff Precious Thomas, the documents and records on file in this matter, and such additional arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

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1 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
2 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
3 the department may be downloaded off the court's website. If the party does not have online access,
4 they may call the dedicated phone number for the department as referenced in the local telephone
5 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
6 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
7 court day before the hearing, no hearing will be held.

8
9 DATED: July 26, 2022

Respectfully submitted,

10 GAINES & GAINES,
11 A Professional Law Corporation

12
13 By:

14 DANIEL F. GAINES
15 ALEX P. KATOFISKY
16 Attorneys for Plaintiff Teresa Alexander
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Teresa Alexander (“Plaintiff Alexander”), together with Central Williams
4 (“Plaintiff Williams”) and Precious Thomas (“Plaintiff Thomas”) (hereinafter Plaintiffs
5 Alexander, Williams, and Thomas are collectively referred to as “Plaintiffs”), “aggrieved
6 employees” under the Labor Code’s Private Attorneys General Act of 2004 (“PAGA”),
7 respectfully move this Court for an Order granting approval of the proposed Settlement of the
8 above-captioned lawsuit against Defendant Career Systems Development Corporation
9 (“Defendant”). The proposed Settlement will dispose of the Released Claims asserted on behalf
10 of Plaintiffs and approximately 1,265 employees who worked approximately 42,597 pay periods
11 for Defendant in California between January 28, 2019 and June 19, 2022 (the “Settlement Period”)
12 (the “Aggrieved Employees”).

13 Plaintiff Alexander’s complaint addresses claimed violations of employee protections
14 embodied in the California Labor Code and penalties stemming therefrom for the violation of
15 PAGA. Plaintiff Alexander alleged that Defendant failed to pay all wages due by misclassifying
16 Plaintiff Alexander and certain Aggrieved Employees as overtime exempt, in violation of Labor
17 Code §§ 510, 558 and 1194; failed to pay premium wages to Plaintiff Alexander and Aggrieved
18 Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512, 558, and 1197
19 and IWC Wage Order 4-2001; failed to pay premium wages to Plaintiff Alexander and Aggrieved
20 Employees who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC
21 Wage Order 4-2001; failed to reimburse all business-related expenses to Plaintiff Alexander and
22 Aggrieved Employees, in violation of Labor Code § 2802; failed to provide Plaintiff Alexander and
23 Aggrieved Employees with wage statements that fully and accurately itemized the requirements set
24 forth in Labor Code § 226(a); and failed to timely pay Plaintiff Alexander and certain Aggrieved

1 Employees all wages due at the separation of their employment based on the time frames required
2 by Labor Code §§ 201 and 202.

3 In their separate pending complaint, Plaintiffs Williams and Thomas alleged that Defendant
4 failed to provide Plaintiffs and Aggrieved Employees with wage statements that fully and
5 accurately itemized the requirements set forth in Labor Code § 226(a).

6 As a result of Defendant's alleged violations of the Labor Code, approximately 1,265¹
7 employees are claimed to have suffered Labor Code violations for up to 42,597 aggregate pay
8 periods, with each pay period warranting a \$100 civil penalty based on PAGA's penalty provisions.
9 Defendant denies that any of the Aggrieved Employees suffered any Labor Code violations and
10 denies that Plaintiffs or the Aggrieved Employees are entitled to recover any civil penalties under
11 PAGA.

12 In deciding whether to grant approval of the proposed Settlement, the primary issue to be
13 decided is whether the Settlement is fair, adequate, and reasonable. As set forth herein, the
14 proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and
15 adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys
16 experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation
17 necessary to evaluate the relative strength and value of the PAGA claims, and (4) it reflects a
18 reasoned compromise based directly on the relative strength and value of the PAGA claim, as well
19 as the risks, expense, complexity and likely duration of further litigation.

20 The value achieved by the Settlement may be gleaned from the fact that the Labor and
21 Workforce Development Agency ("LWDA") and the approximately 1,265 Aggrieved Employees
22 encompassed by the Settlement will receive no less than \$679,326 under the terms of the
23 Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and
24 Workforce Development Agency . . . and 25 percent to the aggrieved employees." *See Labor Code*
25 *§ 2699(i)*. This is a reasonable recovery, not only because further litigation may have resulted in a

26 ¹ Defendant has confirmed that there are 1,265 Aggrieved Employees who worked a total of 42,597
27 pay periods during the relevant time frame. Based on the escalator provision in paragraph 17(b) of
28 the Settlement Agreement, the Maximum Settlement Amount will be \$1,196,805. The calculations
and analysis in this Motion are based on the final Aggrieved Employee count.

1 net-zero recovery based on the defenses available to Defendant, but because the amount secured by
2 Plaintiffs is sizable and in line with – if not more substantial than – similar settlements of these
3 types of claims under PAGA. It is also important to underscore that all penalty amounts paid to
4 Aggrieved Employees will be an unexpected windfall, as employees typically do not bring
5 individual lawsuits asserting only PAGA penalties.

6 For these reasons, as set forth more fully herein, Plaintiffs respectfully request that this
7 Court enter the Order submitted herewith.

8 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

9 **A. The Parties**

10 Defendant operates several “Job Corps Centers” across the United States, including in
11 Sacramento County, California, where it employed Plaintiffs. Gaines Decl. at ¶ 6.

12 Plaintiff Alexander was employed by Defendant from September 2018 through September
13 2019 as an allegedly misclassified overtime-exempt employee in Sacramento. Gaines Decl. at ¶ 7.

14 Plaintiff Williams was employed by Defendant from September 2019 through July 2021 as
15 a non-exempt employee in Sacramento. Gavron Decl. at ¶ 2.

16 Plaintiff Thomas was employed by Defendant from February 2020 through July 2021 as a
17 non-exempt employee in Sacramento. Gavron Decl. at ¶ 4.

18 The Aggrieved Employees were employed by Defendant in California between January 28,
19 2019 and June 19, 2022. *See* Settlement Agreement, at ¶ 10.

20 **B. The Claims Asserted**

21 Plaintiff Alexander asserts claims that Defendant failed to pay all wages due by
22 misclassifying Plaintiff Alexander and certain Aggrieved Employees as overtime exempt, in
23 violation of Labor Code §§ 510, 558 and 1194; failed to pay premium wages to Plaintiff Alexander
24 and Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7,
25 512, 558, and 1197 and IWC Wage Order 4-2001; failed to pay premium wages to Plaintiff
26 Alexander and Aggrieved Employees who were denied rest periods, in violation of Labor Code §§
27 226.7 and 558 and IWC Wage Order 4-2001; failed to reimburse all business-related expenses to
28

1 Plaintiff Alexander and Aggrieved Employees, in violation of Labor Code § 2802; failed to provide
2 Plaintiff Alexander and Aggrieved Employees with wage statements that fully and accurately
3 itemized the requirements set forth in Labor Code § 226(a); and failed to timely pay Plaintiff
4 Alexander and certain Aggrieved Employees all wages due at the separation of their employment
5 based on the time frames required by Labor Code §§ 201 and 202. Gaines Decl. at ¶ 8.

6 Plaintiffs Williams and Thomas assert a claim that Defendant failed to provide Plaintiffs
7 and Aggrieved Employees with wage statements that fully and accurately itemized the requirements
8 set forth in Labor Code § 226(a). Gavron Decl. at ¶¶ 3, 5-6.

9 **C. Procedural Posture**

10 Plaintiff Alexander exhausted PAGA's administrative notice requirements on or about
11 January 28, 2020, when she submitted a letter by online submission to the LWDA and by certified
12 mail to Defendant outlining the facts and theories underlying her claims. *See Exhibit B* to Gaines
13 Decl. at ¶ 9. Plaintiff Alexander then filed her PAGA representative complaint on May 6, 2020 in
14 the Sacramento County Superior Court on behalf of herself and other Aggrieved Employees
15 seeking penalties pursuant to PAGA for Defendant's violations of Labor Code §§ 201, 202, 226(a),
16 226.3, 226.7, 510, 512, 558, 1194, and 2802. On or about July 22, 2020, Defendant filed its Answer
17 to Plaintiff Alexander's complaint. Gaines Decl. at ¶ 10.

18 Plaintiffs Williams and Thomas exhausted PAGA's administrative notice requirements on
19 or about October 19, 2021 and December 1, 2021, respectively, when they submitted letters by
20 online submission to the LWDA and by certified mail to Defendant outlining the facts and theories
21 underlying their claims. *See Exhibits A and B* to Gavron Decl. at ¶¶ 3, 5. Plaintiffs Williams and
22 Thomas then filed their PAGA representative complaint on January 6, 2022 in the Sacramento
23 County Superior Court, Case No. 34-2022-00313560, on behalf of themselves and other Aggrieved
24 Employees seeking penalties pursuant to PAGA for Defendant's violations of Labor Code § 2698,
25 *et seq.* Defendant has not filed its Answer to Plaintiffs Williams and Thomas complaint in their
26 action. Gavron Decl. at ¶ 6.

27 Concurrently with the filing of this Motion, Plaintiffs submitted the Settlement Agreement,
28

1 together with this Motion and all supporting documents, to the LWDA via online upload on July
2 26, 2022. Service of the LWDA is reflected on the Declaration of Service submitted herewith.
3 Gaines Decl. at ¶ 11.

4 The Settlement provides that, after the Court enters its Order and Judgment approving the
5 Settlement and Defendant funds the Maximum Settlement Amount, Plaintiffs Williams and
6 Thomas will dismiss their Action with prejudice. *See* Settlement Agreement at ¶ 22.

7 **D. Plaintiffs' Counsel's Investigation**

8 Counsel for Plaintiffs engaged in formal and informal discovery of Defendant's alleged
9 Labor Code violations, which specifically targeted evaluating the strength and value of the PAGA
10 claims in preparation for a resolution of this Action. Gaines Decl. at ¶ 12. Gavron Decl. at ¶¶ 10-
11 11.

12 Plaintiffs' Counsel obtained and reviewed multiple documents, including (i) Plaintiffs'
13 employee files and wage statements, (ii) policy documents relating to the employment of Plaintiffs
14 and other Aggrieved Employees, and (iii) data relating to the number of alleged violations and the
15 value of the recoverable penalties. Gaines Decl. at ¶ 13. Gavron Decl. at ¶¶ 10-11.

16 Based on the information received, as well as through discussions with Defendant's
17 Counsel, Plaintiffs' Counsel were able to (i) determine the total number of distinct individuals
18 falling within the definition of "Aggrieved Employee" for the relevant statutory period, and (ii)
19 construct a damage model that calculated the maximum realistic amount of PAGA penalties that
20 could be levied against Defendant within the Settlement Period. Defendant, however, disputed
21 Plaintiffs' claims and disputed both the existence of and extent of liability as alleged by Plaintiffs.
22 Gaines Decl. at ¶ 14.

23 Based on Plaintiffs' Counsel's experience in litigating similar "representative" wage and
24 hour claims, the degree of investigation that was conducted, and the amount of data that was
25 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the
26 strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-5, 12-15; Gavron Decl. at ¶¶
27 10-13.

1 **E. Settlement Negotiations**

2 On April 19, 2022, the Parties participated in mediation session with respected mediator
3 Louis Marlin, Esq. During the mediation, the parties engaged in arm's-length negotiations. At the
4 conclusion of the mediation, Mr. Marlin successfully brought the Parties to agree on a resolution
5 of the PAGA claims asserted in the two actions. Gaines Decl. at ¶ 16.

6 **F. The Proposed Settlement**

7 The Parties jointly prepared and executed the PAGA Settlement Agreement, attached to the
8 Declaration of Daniel F. Gaines filed concurrently herewith as **Exhibit C** (the "Settlement
9 Agreement," or "Settlement"). The Settlement Agreement sets forth the terms of the Settlement
10 reached by the Parties, including the following key points:

11 1. Defendant agrees to settle this matter for the payment of One Million One Hundred
12 Fifty Thousand Dollars (\$1,150,000) (adjusted, based on the escalator provision in paragraph 17(b)
13 of the Settlement Agreement to One Million One Hundred Ninety Six Thousand Eight Hundred
14 and Five Dollars (\$1,196,805)) (the "Maximum Settlement Amount"), which shall be all inclusive,
15 encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved
16 Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiffs'
17 Counsel's attorneys' fees and costs of suit, and (iv) general release payments to Plaintiffs. *See*
18 Settlement Agreement, at ¶ 17.

19 2. The total sum available for payment of PAGA penalties shall be calculated by
20 deducting \$432,479 for the payment of Plaintiffs' Counsel's fees and costs (\$418,881.75 in fees
21 and \$13,597.25 in costs)², \$25,000 to each Plaintiff (\$75,000 total) for their general release
22 payments, and the costs of administration (up to \$10,000) from the Maximum Settlement Amount,
23 yielding approximately \$679,326. Seventy-five percent (75%) of this amount, or \$509,494.50,
24 shall be distributed to the LWDA, and the remaining twenty-five percent (25%) or \$169,831.50,
25 shall be distributed to the Aggrieved Employees. *See* Settlement Agreement, at ¶¶ 17(a), 18, 19-

26 _____
27 ² Plaintiffs' counsel's formal fee request is thirty-five percent of the Maximum Settlement
28 Amount and combined total final costs of \$13,597.25, as discussed herein and set forth in
Exhibit D to the Gaines Declaration and **Exhibit C** to the Gavron Declaration. This cost
request is less than the \$25,000 allocated in the Settlement.

21.

3. All Aggrieved Employees will receive a pro rata share of the \$169,831.50, which shall be distributed based on the number of Pay Periods each Aggrieved Employee worked for Defendant in California during the Settlement Period. *See* Gaines Decl. at ¶ 22; Settlement Agreement, at ¶ 18. Although these calculations will not be made until after approval, a rough estimation of the value to the 1,265 individuals falling within the definition of “Aggrieved Employee” may be gleaned from the fact that an equal division would provide about \$134.25 to each Aggrieved Employee, net of payments to the LWDA, to the Settlement Administrator, attorneys’ fees and costs. The amount each Aggrieved Employee actually receives will vary depending on the number of pay period he or she worked during the Settlement Period. Settlement Agreement, at ¶ 18. The LWDA will be paid a massive \$509,494.50. Gaines Decl. at ¶ 23.

4. In exchange for the above settlement consideration, Defendant and the Released Parties shall be entitled to the following release from each and every Aggrieved Employee, including Plaintiffs³:

Upon entry of the Order and Judgment, and subject to Defendant’s full payment of the Maximum Settlement Amount, Plaintiffs and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Released Claims which accrued during the Settlement Period (January 28, 2019 to June 19, 2022). The res judicata effect of the Judgment will be the same as that of the Release. Plaintiff, the Aggrieved Employees and the State of California may hereafter discover facts or legal arguments in addition to, or different from, those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Settled Claims. Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any individual wage and hour claims or unpaid wage claims by virtue of this Settlement.

The “Released Claims” are all causes of action and factual or legal theories/allegations that were alleged in the operative complaints in

³ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act . . .”).

1 the Actions under PAGA, or reasonably could have been alleged
2 under PAGA based on the facts, legal theories, California Labor
3 Code sections, and primary rights at issue in the Complaints filed in
4 the Actions including, but not limited to, all of the following claims
5 for civil penalties premised on: (a) failure to pay all minimum wages;
6 (b) failure to pay premium wages; (c) failure to pay all overtime
7 wages; (d) failure to provide rest periods and pay missed rest period
8 premiums; (e) failure to provide meal periods and pay missed meal
9 period premiums; (f) failure to pay all wages earned and unpaid at
10 separation; (g) failure to furnish accurate itemized wage statements;
11 (h) failure to reimburse all business-related expenses; (i) civil
12 penalties under the PAGA related to the claims set forth herein; and
13 (j) any other claims or penalties under the wage and hour laws and
14 IWC Wage Orders based on the facts pleaded in the Actions or
15 primary rights pursued in the Actions. The period of the Release shall
16 encompass the entire Settlement Period. The res judicata effect of the
17 Judgment will be the same as that of the Release.

18 *See* Settlement Agreement, at ¶¶ 7, 9, 26.

19 5. Settlement administration, which is to be paid from the Maximum Settlement
20 Amount, will not exceed \$10,000. *See* Settlement Agreement, at ¶ 21. Phoenix Class Action
21 Administration Solutions, a reputable settlement administration company, has agreed to administer
22 the settlement within this amount, submitting a competitive bid. *See* Gaines Decl. at ¶ 24.

23 6. As detailed herein, Plaintiffs' counsel seeks an award of attorneys' fees and
24 litigation costs of a combined \$432,479, and Plaintiffs seek a general release payment of \$25,000
25 each. *See* Settlement Agreement, at ¶¶ 19-20.

26 7. Finally, under the terms of the Settlement, funds represented by uncashed checks
27 that remain outstanding 180 days after the mailing of the Settlement checks by the Settlement
28 Administrator will be tendered to the unclaimed property fund of the State Controller's
Unclaimed Office, to be held in the name of the respective Aggrieved Employee. *See* Settlement
Agreement, at ¶ 25.

29 **III. LEGAL ARGUMENT**

30 **A. Standards For Approval Of A PAGA Settlement**

31 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
32 statute, which states that the "[t]he superior court shall review and approve any settlement of any
33

1 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2).

2 As with any settlement, the Court must be mindful in conducting its inquiry that
3 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
4 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
5 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is . . . ‘a yielding of
6 absolutes and an abandoning of highest hopes”’ [*Officers for Justice v. Civil Service Com.*, 688
7 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
8 of wasteful and expensive litigation that induce consensual settlements.” *See id.*, at 625. As such,
9 “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
10 or “judged against a hypothetical or speculative measure of what might have been achieved by the
11 negotiators.” *See id.*

12 Although the operative PAGA statute does not set forth the criteria on which a PAGA
13 settlement is to be judged, California law does state that some of the factors for review of a class
14 action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Cal. Rules of Court, Rule
15 3.769, may be “useful in evaluating the fairness of a PAGA settlement” to the reviewing court. *See*
16 *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 5th 56, 77 (“Thus, while PAGA does not require
17 the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for
18 settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public
19 and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors
20 used to evaluate class action settlements bear on a settlement's fairness—including the strength of
21 the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of
22 further litigation, and the settlement amount—these factors can be useful in evaluating the fairness
23 of a PAGA settlement.”) Courts within California have continued to approve settlements of PAGA
24 claims encompassed within class action settlements using Rule 23 criteria.⁴ However, it is

25 _____
26 ⁴ As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
27 balancing of several factors which may include, among others, some or all of the following: [1] the
28 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
experience and views of counsel; [7] the presence of a governmental participant; and [8] the

important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Cal. Rules of Court, Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount which “aggrieved employees” are to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective

While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez v. CJADER Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010).

B. The Settlement Meets All The Criteria For Approval

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA considerations detailed above – the proposed Settlement embodies all of the key features of a

reaction of the class members to the proposed settlement.” *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir., 1998). “Not all of these factors will apply to every class action settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” *See Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal., 2004).

1 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
2 approval.

3 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

4 In conducting a review of a settlement, it is generally recognized that an “agreement ...
5 reached through arms-length negotiation between experienced parties . . . is entitled to a
6 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
7 44 (C.D. Cal. Apr. 12, 2010).

8 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
9 length negotiations brokered through a respected third party neutral [Gaines Decl. at ¶ 16], (2) that
10 was negotiated by Counsel with significant experience in similar representative action litigation
11 [*see id.*, at ¶¶ 2-5 and **Exhibit A**] [*see also* Gavron Decl. at ¶¶ 10-13], (3) which occurred after
12 Counsel had conducted sufficient investigation to evaluate the strength and potential value of the
13 PAGA claims, as well as evaluating the risks of litigating this claim through trial. *See id.*, at ¶¶ 12,
14 25, 27. Based thereon, the court should give considerable weight to the competency and integrity
15 of counsel in assuring itself that the Settlement Agreement represents an arm’s-length transaction
16 entered without self-dealing or other potential misconduct.

17 **2. The Relative Strength Of The PAGA Claim, And the Realistic Range of**
18 **Outcomes In The Litigation, Strongly Favor Approval of the Settlement**

19 The relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court
20 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
21 defenses to the theories of penalty-liability put forward by Plaintiffs that, if successful, had the
22 potential to completely eliminate any recovery.

23 This case addresses alleged violations of important employee protections embodied in the
24 California Labor Code – namely, that Defendant failed to pay all wages due by misclassifying
25 Plaintiff Alexander and certain Aggrieved Employees as overtime exempt (Labor Code §§ 510,
26 558, and 1194); failed to provide legally compliant meal and rest periods, or compensation in lieu
27 thereof (Labor Code §§ 226.7, 512, 558, and 1197); failed to reimburse all business-related
28

1 expenses (Labor Code § 2802); failed to accurate and complete wage statements (Labor Code §
2 226(a)); and failed to pay all wages due and owing upon separation of employment (Labor Code
3 §§ 201-202). Defendant's maximum theoretical exposure in this action, without stacking
4 potentially duplicative and oppressive penalties, totals approximately \$4,259,700 computed by
5 multiplying 42,597 aggregate pay periods by \$100 each. *See* Gaines Decl. at ¶ 19. While the
6 PAGA does provide the potential for a heightened penalty for subsequent violations, courts are
7 often hesitant to award a heightened penalty where there is no prior citation by the Labor
8 Commissioner. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
9 heightened penalty where defendant was not notified by Labor Commissioner or any court that it
10 was subject to the California Labor Code). The Ninth Circuit's holding in *Bernstein* also supports
11 that a settlement valuation that does not "stack" penalties. *Id.*

12 Defendant contends it acted within the requirements of California law at all times as to all
13 Aggrieved Employees. It further contends that not every pay period at issue involved an alleged
14 Labor Code violation subject to civil penalties. Moreover, it maintained that even if the Court did
15 award penalties, the Court could and would *substantially* reduce the penalties awarded based on
16 the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved
17 employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified
18 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
19 result in an award that is unjust, arbitrary and oppressive, or confiscatory."). *See* Gaines Decl. at ¶
20 18. Defendant also argued that it had a valid and enforceable arbitration agreement, which could
21 preclude the litigation of PAGA claims on a representative basis altogether, given the United States
22 Supreme Court's recent ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022). *Id.*

23 Based on these disputes, which had the potential to completely eliminate Plaintiffs'
24 recovery, the range of realistic "litigation outcomes" on the Plaintiffs' PAGA claim was defined
25 by a "maximum possible liability" amount of approximately \$4,259,700 based on 42,597 aggregate
26 pay periods in the Settlement Period, without stacking claims, at \$100 per violation, and a net-zero
27 recovery based on the defenses asserted by Defendant. *See* Gaines Decl. at ¶ 19. Notwithstanding
28

the existence of such issues, the Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in the Settlement. Gaines Decl. at ¶ 20.

3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement

Approval of the proposed Settlement is also appropriate in light of the risk, expense, and complexity of further litigation. As discussed above, the proposed Settlement takes into consideration the specific factual and legal hurdles faced by the Plaintiffs in establishing Defendant's penalty-liability in this case, which again, may have resulted in a net-zero recovery. These risks – when balanced with the fact that the settlement achieves a very significant recovery (as demonstrated below), and that further litigation poses a risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of Settlement approval.

4. The Benefits Conferred by the Settlement Balance in Favor of Approval

The Settlement provides a significant monetary benefit that falls well within “the range of an acceptable settlement” under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial:

The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at 625 (emphasis in original). Thus, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Id.* at 624 (citations omitted). As the Second Circuit has pointed out: “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2d Cir. 1974).

See Linney, 151 F.3d at 1242.

Here, after all deductions are made for administration, general release payments, attorneys' fees and costs, \$679,326 will be paid out, of which \$509,494.50 (i.e. 75%) will go to the LWDA,

1 and \$169,831.50 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code §
2 2699(i) (“civil penalties recovered by aggrieved employees shall be distributed as follows: 75
3 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved
4 employees.”). Gaines Decl. at ¶¶ 22-23, 25.

5 This result is remarkable, as settlements of PAGA claims impacting thousands of
6 individuals have been approved as reasonable for amounts far less than the payment in this case.
7 *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012)
8 (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to the PAGA Of the \$10,000,
9 75 percent (\$7,500) will be paid to the State of California, and the remainder (\$2,500) will benefit
10 the class The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
11 approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal.
12 Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to the plaintiff’s PAGA claims, and will pay \$7,500
13 to the LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
14 settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the
15 allocation of the Settlement to the plaintiff’s PAGA claim.”); *Schiller v. David's Bridal, Inc.*, 2012
16 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) (“Pursuant to the Settlement Agreement, the
17 parties have agreed to pay \$7,500 to the California Labor and Workforce Development Agency . .
18 . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it
19 be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11,
20 2012) (“Pursuant to the Settlement Agreement, Defendant has agreed to pay \$15,000 to the
21 California Labor and Workforce Development Agency The Court finds that the PAGA
22 payment is set at a reasonable amount, and it shall be approved.”).⁵

23 Thus, notwithstanding the existence of issues having the potential to completely eliminate
24

25 ⁵ Significantly, several of the above-cited actions involved substantially more “aggrieved
26 employees” than the approximately 1,265 aggrieved employees in the instant Lawsuit. *See Franco*,
27 2012 U.S. Dist. LEXIS 169057, 14 (“2,055 Class Members were ultimately identified”); *Garcia*,
28 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of “approximately 1,869 individuals”);
Schiller, 2012 U.S. Dist. LEXIS 80776, 16 (“3,327 California Class members were ultimately
identified”); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 (“2,051 California Class Members
were ultimately identified”).

1 recovery on the PAGA claims, the Settlement Agreement not only achieves a recovery that exceeds
2 typical PAGA awards routinely approved by the courts, it recovers significant monies for
3 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
4 strongly in favor of approval of the Settlement. Gaines Decl., ¶ 25.

5 **5. The Scope of the Release is Narrowly Tailored**

6 As discussed above, the California Supreme Court has concluded that in the context of
7 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
8 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
9 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
10 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
11 §§ 2698 *et seq.* *See* Settlement Agreement, at ¶¶ 9 and 26.

12 As such, this factor balances strongly in favor of approval of the Settlement.

13 **6. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the**
14 **Settlement**

15 Plaintiffs’ Counsel has a significant degree of experience in complex wage and hour
16 litigation. *See* Gaines Decl., ¶¶ 2-5, Gaines Decl. at **Exhibit A**. *See also* Gavron Decl., ¶¶ 15-22.
17 In Plaintiffs’ Counsel’s view, the benefit conferred by the proposed Settlement is fair, reasonable,
18 and adequate under the circumstances, as it reflects a reasoned compromise which takes into
19 consideration the risks inherent in this case which had the potential to completely eliminate
20 recovery. Gaines Decl., ¶¶ 14-18. As such, this factor balances in favor of approval of the
21 Settlement.

22 **7. The Extent Of Discovery Completed And The Stage Of The Proceedings**
23 **Favor Approval of the Settlement**

24 In evaluating this element, the Court should be mindful that “‘formal discovery is not a
25 necessary ticket to the bargaining table’” [*Linney*, 151 F.3d at 1239], as the relevant consideration
26 is “whether ‘the parties have sufficient information to make an informed decision about
27 settlement.’” *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
28

26 (C.D. Cal. Nov. 9, 2011).

Here, the extent of discovery conducted was sufficient to enable Plaintiffs' Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at ¶¶ 12-16. As discussed above, Plaintiffs' Counsel's investigation was sufficient to, among other things, tabulate with precision the total number of alleged Labor Code violations at issue during the Settlement Period, identify the total number of individuals falling within the definition of "Aggrieved Employee" for the Settlement Period, and assess the strength of the claims alleged.

Based on Plaintiffs' Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of settlement. *See* Gaines Decl. at ¶ 15.

8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable

In addition to the factors presented above, the proposed Settlement Agreement does not possess any obvious deficiencies. The Settlement contemplates entry of an order and judgment (submitted concurrently herewith) which approves the Settlement and enters Judgment. Paragraph 32 of the Settlement Agreement and paragraph 7 of the proposed order authorize the Court to retain jurisdiction over the Action. This procedure effectively disposes of the Action in its entirety, documents the Court's approval of the Settlement Agreement as required by PAGA, and allows for Court intervention if necessary to enforce the terms of the Settlement Agreement. In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

IV. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER THEIR REASONABLE FEES AND COSTS

Pursuant to the terms of the Settlement, Plaintiffs' Counsel seeks attorneys' fees of \$418,881.75 and reimbursement of total litigation costs of \$13,597.25, falling within the bounds authorized by the Settlement Agreement. *See* Settlement Agreement, at ¶ 19. Plaintiffs' Counsel's entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the amount of fees requested falls well within the range of reasonableness under applicable

standards, as the amount requested constitutes a “percentage of the fund” deemed reasonable in similar wage and hour settlements of this size and approved by California courts, which is not only warranted based on the contingency risk Plaintiffs’ Counsel has agreed to incur for the benefit of the State of California and Aggrieved Employees, but also based on the significant results achieved, as the Settlement obtains a recovery substantially above the range approved as reasonable by California state and federal courts. Based thereon, Plaintiffs’ Counsel respectfully request that the Court enter an order approving the fee and cost amounts requested.

A. Plaintiffs’ Counsel Are Entitled To Recover Their Reasonable Fees And Costs As A Matter Of Right

Plaintiffs’ Counsel are entitled to recover attorneys’ fees and costs under the “common fund” doctrine as a matter of right. As held by the U.S. Supreme Court, “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

Courts have long recognized the “common fund” or “common benefit” doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

The California Supreme Court has held that, “when a number of persons are entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

Where the lawsuit results in the recovery of a fund or property

1 benefiting others as well as Plaintiffs (e.g., a class action), the court
2 has inherent equitable power to order Plaintiffs' attorney fees paid
3 out of the common fund or property [citations]. Such fee spreading
4 assures that all of those benefited by the litigation pay their fair share
5 of obtaining the recovery.

6 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
7 in traditional common fund cases, such as this case. Where the settlement amount is a "certain or
8 easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano*
9 *III*, 20 Cal. 3d at 35; *see also Laffitte v. Robert Half Int'l*, (2016) 1 Cal.5th 480, 503 ("We join the
10 overwhelming majority of federal and state courts in holding that when class action litigation
11 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
12 powers awards class counsel a fee out of that fund, the court may determine the amount of a
13 reasonable fee by choosing an appropriate percentage of the fund created.").

14 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
15 fn.19, the California Supreme Court upheld an attorneys' fee award based on a percentage of the
16 common benefit obtained in a lawsuit by a city employees' association for retroactive wages:

17 It is not necessary to find this suit a proper class action in order to
18 uphold the portion of the judgment awarding counsel for Plaintiffs
19 25 percent of all retroactive salaries and wages received. That award
20 may be sustained under the rule that a litigant who creates a fund in
21 which others enjoy beneficial rights may require those beneficiaries
22 to pay their fair share of the expense of litigation. (*See Sprague v.*
23 *Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer*
24 (1959) 53 Cal.2d 124, 132).

25 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
26 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which
27 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
28 costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
29 the California Supreme Court recognized that the common benefit doctrine has been applied
30 "consistently in California when an action brought by one party creates a fund in which other
31 persons are entitled to share."

32 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
33 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of

1 attorneys' fees in a representative action as the proper exercise of the court's broad equitable
2 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and
3 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
4 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
5 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
6 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
7 of residential property in an inverse condemnation action).

8 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth,
9 Tenth, Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
10 reasonable attorneys' fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.*
11 (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal
12 authority in favor of the percentage fee method); *see also, Lealao v. Beneficial California, Inc.*
13 (2000) 82 Cal.App.4th 19, 30-31 (describing same).

14 Thus, as Plaintiffs' Counsel have expended a significant amount of time and money to
15 secure a \$1,196,805 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
16 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
17 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
18 which sum or ‘fund’ the fees are to be paid.”)], and in doing so, have exclusively borne the risk of
19 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
20 receiving the PAGA Notices), Plaintiffs' Counsel are entitled to claim reasonable fees from that
21 fund under applicable precedent.⁶

22 \\\

23
24 ⁶ Plaintiffs' Counsel is also entitled to recover attorney's fees and costs as a matter of right under
25 the PAGA statute [*Labor Code* § 2699(g)(1) (“Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney's fees and costs.”)], and under *C.C.P.* § 1021.5, as the
27 instant PAGA action was by definition “for the public benefit” and secured monetary awards for
28 approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
(2007) 154 Cal. App. 4th 1, 16-17 (2007) (“Estrada's personal motivation does not diminish the
fact that he pursued this public interest class action not only for himself but on behalf of a class
comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. []
No more is required to satisfy the ‘significant benefit,’ ‘public interest,’ and ‘large class of persons’
requirements of Code of Civil Procedure section 1021.5.”).

1 **B. The Fee Amount Requested Is Reasonable**

2 In addition to the forgoing, Plaintiffs' Counsel's request for attorneys' fees in the amount
3 of \$418,881.75, or 35% of the adjusted \$1,196,805 Maximum Settlement Amount, falls well within
4 the "zone of reasonableness."

5 It is important to highlight at the outset that the fee amount presently sought is not
6 extraordinary, but actually falls at the "average" fee deemed reasonable under California State court
7 authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage
8 and hour class actions that result in recovery of a common fund under \$10 million." *See e.g. Martin*
9 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). In fact, this fee
10 request falls right in the middle of that range.

11 Moreover, taking into account the contingency risk Plaintiffs' Counsel agreed to incur for
12 the benefit of the State of California (which elected not to take the case after receiving the PAGA
13 Notice), and the significant results achieved – facts which justify the requested fee – Plaintiffs'
14 Counsel's requested fee is reasonable under all applicable standards.

15 **C. The Fee Amount Allocated by The Settlement Agreement Is Within the**
16 **Zone of Reasonableness Under the "Percentage of the Fund" Method**

17 The amount of fees requested by Plaintiffs' Counsel is also reasonable based on standards
18 applicable to the "percentage of the fund" method. "When assessing whether the percentage
19 requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of
20 litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the
21 financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing,*
22 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

23 First, the results achieved by Plaintiffs' Counsel are significant, as Defendant shall pay
24 \$1,196,805 pursuant to the Settlement. This is a significant recovery given the risk of success in
25 obtaining any recoverable penalties [Gaines Decl. at ¶ 26], and further, as the settlement of PAGA
26 claims impacting much higher numbers of individuals have been approved as reasonable for
27 between \$7,500 and \$15,000. *See* Section III.B.4., *supra*.

28 Second, such results were achieved in the face of significant risks. As explained above,

1 Defendant maintained defenses to Plaintiffs' PAGA claims that very well could have resulted in a
2 net-zero recovery at trial. Gaines Decl. at ¶ 27.

3 Third, notwithstanding this risk of loss, Plaintiffs' Counsel undertook representation of the
4 instant PAGA claims for the benefit of the State of California on a contingency basis. Gaines Decl.
5 at ¶ 28. Gavron Decl. at ¶ 23. This not only required Plaintiffs' Counsel to personally assume the
6 risk of nonpayment in securing the very substantial financial benefit the State of California stands
7 to receive, but constitutes a "loan" on Plaintiffs' Counsel services – both of which are factors
8 warranting fee enhancement under applicable California Supreme Court authority:

9 One of the most common fee enhancers . . . is for contingency risk.
10 We reaffirmed the propriety of a contingency risk enhancement in
11 Ketchum: The economic rationale for fee enhancement in
12 contingency cases has been explained as follows: A contingent fee
13 must be higher than a fee for the same legal services paid as they are
14 performed. The contingent fee compensates the lawyer not only for
15 the legal services he renders but for the loan of those services. The
16 implicit interest rate on such a loan is higher because the risk of
17 default (the loss of the case, which cancels the debt of the client to
18 the lawyer) is much higher than that of conventional loans. A lawyer
19 who both bears the risk of not being paid and provides legal services
20 is not receiving the fair market value of his work if he is paid only
21 for the second of these functions. If he is paid no more, competent
22 counsel will be reluctant to accept fee award cases.

23 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580 (internal citations and
24 quotations omitted).

25 Finally, the percentage requested by Plaintiffs' Counsel falls within a typical range,
26 particularly in light of the settlement size. *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, 23
27 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result
28 in recovery of a common fund under \$10 million." See also *Crandall v. U-Haul International, Inc.*,
LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

Attorneys' fee awards in the amount sought here are well-established by California law and
practice. Accordingly, Plaintiffs' Counsel's fee request is fair and reasonable and is consistent with
the awards in California and the Ninth Circuit. It is also reasonable given the history of this action
and the results obtained.

1 **D. Plaintiffs’ Counsel’s Request for Costs is Reasonable**

2 In the course of this litigation, Plaintiffs’ Counsel collectively incurred out-of-pocket
3 costs of \$13,597.25 through the conclusion of this matter. *See* Gaines Decl. at ¶ 32, **Exhibit D**.
4 *See also* Gavron Decl. at ¶ 24, **Exhibit C**.

5 As demonstrated in the Gaines and Gavron Declarations submitted herewith, the incurred
6 costs included filing fees, mediation fees, expert analysis fees, photocopy charges, service of
7 process fees, mailing charges, and other charges typical of litigation of this nature. *Id.* Such costs
8 are appropriate for cost reimbursement in these types of cases. *See e.g., In re United Energy Corp.*
9 *Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19
10 (1987)); *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

11 The costs incurred by Plaintiffs’ Counsel in this litigation benefited Plaintiffs, Aggrieved
12 Employees, and the State. In light of the litigation costs that Plaintiffs’ Counsel were required to
13 incur to prosecute this action, Plaintiffs’ Counsel’s cost request is reasonable and should be granted.

14 **V. THE GENERAL RELEASE PAYMENTS SOUGHT BY PLAINTIFFS ARE**
15 **REASONABLE AND SHOULD BE APPROVED**

16 The Parties have agreed that Plaintiffs will be paid general release payments in the amount
17 of \$25,000 each. These payments are intended to recognize both the time and effort that Plaintiffs
18 spent on behalf of other Aggrieved Employees and the State as well as in exchange for a general
19 release in favor of Defendant due to Plaintiffs’ valuable individual claims to be extinguished. *See*
20 Settlement Agreement at ¶ 20. *See* Gaines Decl., ¶ 33; Gavron Decl., ¶ 14; Declaration of Teresa
21 Alexander (“Alexander Dec.”); Declaration of Centrial Williams (“Williams Dec.”); and
22 Declaration of Precious Thomas (“Thomas Dec.”) submitted herewith.

23 As to an incentive award, case law supports the award of incentive payments in private
24 attorney general actions. The Ninth Circuit has recognized that a named plaintiff’s “willingness to
25 act as a private attorney general” may justify the award of an incentive payment. *Rodriguez v. West*
26 *Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub*
27 *LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for
28 the Eastern District of California approved a similar PAGA-only settlement and awarded a service

1 payment to the representative plaintiff in recognition of her efforts.

2 The traditional bases for awarding incentive awards in class settlements support the award
3 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
4 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
5 awards and held that “the rationale for making enhancement or incentive awards to named Plaintiffs
6 is that he or she should be compensated for the expense or risk he has incurred in conferring a
7 benefit” on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a
8 traditional class action.

9 Without Plaintiffs’ efforts, there would be no recovery at all. The requested general release
10 payments are appropriate to compensate Plaintiffs for the risk and expense they incurred in
11 conferring a benefit on behalf of other of Defendant’s employees and the State of California. *See*
12 Settlement Agreement, ¶ 20.

13 As a result of the named Plaintiffs’ efforts, Aggrieved Employees will receive monetary
14 settlement payments totaling approximately \$169,831.50 in the aggregate, and the State of
15 California will receive approximately \$509,494.50 to be put toward education about and
16 enforcement of California’s labor laws.

17 In this case, Plaintiffs performed the following tasks, among others: (1) assisted Counsel in
18 investigating and substantiating the claims alleged in this action, including multiple interviews with
19 counsel to review facts, documents, and Defendant’s policies; (2) assisted in the preparation of the
20 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
21 settlement of this litigation. *See generally*, Alexander, Williams, and Thomas Declarations.
22 Moreover, as with any plaintiff who files a civil action, the named Plaintiffs undertook the financial
23 risk that, in the event of a judgment in favor of Defendant in this action, they could have been
24 personally responsible for any attorneys’ fees and costs awarded in Defendant’s favor.

25 The award of such payment to Plaintiffs is especially warranted in a case like this one. It is
26 necessary to ensure that employees, like Plaintiffs, continue to bring claims like those brought here
27 to enforce the rights of employees. Individuals like Plaintiffs (and most Aggrieved Employees)

1 would have little, if any, recourse without the representative action device. Most Aggrieved
2 Employees – like the Plaintiffs—would be fearful of retaliation in response to filing any lawsuit,
3 much less a representative action suit. Plaintiffs must be commended for pursuing their claims; a
4 modest payment like that sought here is an appropriate means of doing so.

5 Plaintiffs are also entering into a full general release against Defendant and its Released
6 Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
7 Aggrieved Employees are releasing only limited PAGA civil penalty claims, while Plaintiffs are
8 releasing all claims which each of them asserts or could assert against Defendant. *See Settlement*
9 *Agreement at ¶ 20*. No other Aggrieved Employee is subject to this broad form of release. *Gaines*
10 *Decl. at ¶ 35*.

11 The value of Plaintiff Alexander’s released unpaid wage claims are substantial – far greater
12 than the \$25,000 allocated to her in the Settlement. It represents a substantial compromise of her
13 unpaid wage claims. Plaintiff Alexander was allegedly improperly classified as overtime
14 exempt and her individual damages exceed \$53,000. *Gaines Decl. at ¶ 36; Exhibit E* (a
15 summary of her individual damages).

16 The value of Plaintiffs Williams and Thomas’ individual claims are also substantial because
17 they have agreed to release any and all claims known and unknown. This release in conjunction
18 with a waiver of the protections of Civil Code § 1542 effectively waives any claim related to their
19 employment—not just those claims for civil penalties premised on the PAGA that the Aggrieved
20 Employees will release as a result of the Settlement. Plaintiffs will be foreclosed from raising
21 claims under the Fair Employment Housing Act, or any other claims related to their employment
22 with Defendant. This supports their request for a general release payment.

23 This broad release by Plaintiffs was negotiated (and necessary) to resolve the Action.
24 Plaintiffs threatened to assert their individual claims and Defendant required that they be resolved
25 in connection with the resolution of the Action. Without the resolution and release of Plaintiffs’
26 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
27 this settlement, such that its objectives would not be achieved absent the general releases. *Gaines*
28

Decl. at ¶ 37.

VI. CONCLUSION

As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it represents a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth above, Plaintiffs respectfully request that this Court, as set forth in the proposed Order and Judgment Approving Settlement, do the following:

1. Grant approval of the Settlement Agreement, pursuant to California Labor Code § 2699, subpart 1;
2. Appoint Phoenix Class Action Administration Solutions as the Settlement Administrator and approve its administration fees up to \$10,000 for payment out of the Maximum Settlement Amount;
3. Approve the award of attorneys' fees and costs to Plaintiffs' Counsel in the amount of \$432,479 from the Maximum Settlement Amount;
4. Approve the general release payments to Plaintiffs in the amount of \$25,000 each from the Maximum Settlement Amount;
5. Direct disbursement of the remaining Maximum Settlement Amount to the LWDA and all Aggrieved Employees as provided for in the Settlement Agreement; and
6. Enter judgment consistent with the Settlement Agreement.

Date: July 26, 2022

Respectfully submitted,

GAINES & GAINES, APLC

By: _____

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