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Attorneys for Plaintiff BRIDGETT WATSON,
on behalf of herself and others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

BRIDGETT WATSON, on behalf of herself
and others similarly situated,

PLAINTIFF,

vs.

TOLL GLOBAL FORWARDING (USA) INC.;
TOLL GLOBAL FORWARDING SCS (USA)
INC.; TGF MANAGEMENT GROUP
HOLDCO INC.; SIMPLIFIED LABOR
STAFFING SOLUTIONS, INC.;
CHARTWELL STAFFING SERVICES, INC.;
INSPERITY EXPENSE MANAGEMENT,
INC.; and DOES 1 to 100, Inclusive,

DEFENDANTS.

Case No.: 20STCV12986

*[Assigned for all purposes to the Hon. David S.
Cunningham, SSC Dept. 11]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; [Proposed]
Order]*

Hearing Information:

Date: July 3, 2023

Time: 10:00 a.m.

Dept.: SSC11

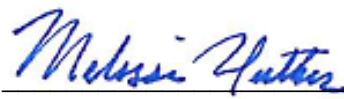
1 **TO THE HONORABLE COURT, TO ALL PARTIES, AND TO THEIR COUNSEL**
2 **OF RECORD: NOTICE IS HEREBY GIVEN** that on July 3, 2023 at 10:00 a.m. in Department
3 SSC11 of the Los Angeles County Superior Court, Spring Street Courthouse located at 312 N. Spring
4 Street, Los Angeles, California 90012, Plaintiff Bridgett Watson ("Plaintiff") will move for an order
5 granting approval of the proposed settlement on the terms and conditions set forth in the PAGA
6 Settlement Agreement (the "Settlement Agreement" or "Settlement") between Plaintiff and
7 Defendants Toll Global Forwarding (USA) Inc., Toll Global Forwarding SCS (USA) Inc., TGF
8 Management Group Holdco Inc. (collectively, "Toll"), Simplified Labor Staffing Solutions, Inc.
9 ("Simplified"), Chartwell Staffing Services, Inc. ("Chartwell"), Insperity PEO Services, L.P.
10 erroneously sued as Insperity Expense Management, Inc. ("Insperity") (collectively, "Defendants").
11 A copy of the Settlement Agreement is attached as **Exhibit 1** to the Declaration of Melissa A. Huether
12 in Support of Plaintiff's Motion for Approval of Private Attorneys General Act Settlement ("Huether
13 Dec.").

14 **Notice to the LWDA:** On April 24, 2023 Plaintiff's Counsel filed the settlement agreement
15 with the LWDA. (Huether Dec. ¶ 58, Ex. 3.)

16 The motion is based on this Notice of Motion and Motion, the Memorandum of Points and
17 Authorities in Support, Declaration of Melissa A. Huether in Support, exhibits, all other pleadings
18 and papers on file in this action, and any oral argument or other matter that may be considered by the
19 Court.

20 Date: April 24, 2023

21 Respectfully submitted,
22 **LAVI & EBRAHIMIAN, LLP**

23 By: 
24 Joseph Lavi
25 Vincent C. Granberry
26 Melissa A. Huether
27 Attorneys for Plaintiff Bridgett Watson
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TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF LITIGATION..... 2

 A. The Parties 2

 B. The Complaint and Allegations..... 2

 C. Production Of Directly Relevant Informal Discovery and Legal Analysis
 By Parties' Counsel..... 4

III. SUMMARY OF SETTLEMENT 5

 A. Terms of Settlement 5

 B. Notice and Distribution of PAGA Funds 7

IV. ARGUMENT IN FAVOR OF APPROVAL..... 7

 A. The Proposed PAGA Settlement Should Be Approved 7

 B. The Proposed Settlement is a Reasonable Compromise of Claims 9

V. THE REQUESTED ATTORNEYS’ FEES AND COSTS SHOULD BE
APPROVED 16

 A. Plaintiff's Fee Request Of \$150,000 Of The Gross Settlement Is Proper
 Under The Common Fund Doctrine..... 16

 B. Plaintiff’s Fee Request Is Reasonable Under The Lodestar Method 18

 C. Counsel’s Hourly Rates and Hours are Reasonable..... 18

 1. Counsel’s total hours are reasonable 21

 2. Plaintiff's Costs Request Of \$12,940.75 Is Reasonable 22

VI. CONCLUSION..... 23

TABLE OF AUTHORITIES

Cases	Pages
<i>In re Activision Sec. Litig.</i> (N.D. Cal 1989) 723 F. Supp. 1373	17
<i>Anderson v. Nextel Retail Stores, LLC</i> , Case No. CV 07-4480 (C.D. Cal. June 20, 2010)	19
<i>Arias v. Sup. Ct.</i> (2009) 46 Cal.4th 969.....	7
<i>Barrera v. Gamestop Corp.</i> , Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010).....	19
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	16
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	8, 9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	8, 22
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	9
<i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i> (E.D. Pa. 1985) 630 F.Supp. 482	9
<i>Flannery v. California Highway Patrol</i> (1998) 61 Cal. App. 4th 629.....	19
<i>Hanlon v. Chrysler Corp.</i> (9 th Cir. 1998) 150 F.3d 1011	8
<i>In re HPL Techs., Inc., Secs. Litig.</i> (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912	20
<i>Iskanian v. CLS Transportation L.A., LLC</i> (2014) 59 Cal.4th 348.....	7
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	9

1	<i>Laffitte v. Robert Half Int’l Inc.</i>	
2	(2016) 1 Cal.5th 480.....	16, 17
3	<i>Lealao v. Beneficial California, Inc.</i>	
4	(2000) 82 Cal. App. 4th 19.....	16, 17
5	<i>Linney v. Cellular Alaska Partnership</i>	
6	(9th Cir. 1998) 151 F. 3d 1234.....	9
7	<i>New York Gaslight Club, Inc. v. Carey</i>	
8	(1980) 447 U.S. 54	21
9	<i>PLCM Group, Inc. v. Drexler</i>	
10	(2000) 22 Cal. 4th 1084.....	19
11	<i>Rebney v. Wells Fargo Bank</i>	
12	(1990) 220 Cal.App. 3d 1117	9
13	<i>Richard v. Ameri-Force Mgmt. Servs., Inc.,</i>	
14	Case No. 37-2008-00096019 (San Diego Super. Ct., August 27, 2010)	19
15	<i>Serrano v. Priest</i>	
16	(1977) 20 Cal.3d 25.....	16, 18, 22
17	<i>Serrano v. Unruh</i>	
18	(1982) 32 Cal.3d 621.....	21
19	<i>Stanton v. Boeing</i>	
20	(9th Cir. 2003) 327 F.3d 938.....	17
21	<i>Syers Properties III, Inc. v. Rankin</i>	
22	(2014) 226 Cal.App.4th 691.....	20
23	<i>Vincent v. Hughes Air West, Inc.</i>	
24	(9th Cir. 1977) 577 F.2d 759.....	16
25	<i>Vizcaino v. Microsoft Corp.</i>	
26	(9 th Cir. 2002) 290 F.3d 1043.....	18
27	<i>Wershba v. Apple Computer, Inc.</i>	
28	(2001) 91 Cal.App.4th 224.....	9
	<i>Wininger v. SI Mgmt. L.P.</i>	
	(9th Cir. 2002) 301 F.3d 1115.....	13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Bridgett Watson ("Plaintiff") respectfully submits this memorandum in support of his
4 motion for approval of the settlement of this action pursuant to the Private Attorneys General Act of
5 2004, Labor Code Sections 2698, et seq. (hereinafter "PAGA") with. Defendants Toll Global
6 Forwarding (USA) Inc., Toll Global Forwarding SCS (USA) Inc., TGF Management Group Holdco
7 Inc. (collectively, "Toll"), Simplified Labor Staffing Solutions, Inc. ("Simplified"), Chartwell
8 Staffing Services, Inc. ("Chartwell"), Insperity PEO Services, L.P. erroneously sued as Insperity
9 Expense Management, Inc. ("Insperity") (collectively, "Defendants"). Plaintiff seeks entry of a
10 proposed order and judgment granting approval of the PAGA settlement.

11 As consideration for this settlement, Defendants will fund a non-reversionary, common fund
12 settlement of \$450,000 (the "Gross Settlement Amount") which includes: payment to the California
13 Labor and Workforce Development Agency ("LWDA") and the Aggrieved Employees, PAGA
14 Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses
15 Payment. (Huether Dec. ¶51, Ex. 1 §1.13.) The Net Settlement Amount means the Gross Settlement
16 Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees
17 Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
18 From the Net Settlement Amount, \$40,000 will be distributed pro rata between the Simplified
19 Aggrieved Employees after 75% is distributed to the LWDA and the remainder of the Net Settlement
20 Amount will be distributed pro rata among between Chartwell Aggrieved Employees and the
21 Toll/Insperity Aggrieved Employees after 75% is distributed to the LWDA. The amount to be
22 distributed to the Simplified Aggrieved Employees is \$10,000 and the amount to be distributed to the
23 Chartwell Aggrieved Employees and the Toll/Insperity Aggrieved Employees is estimated to be
24 \$57,514.82. (Huether Dec. ¶59, Ex. 1 §§18 & 43.)

25 The entire Net Settlement Amount is for the payment of civil penalties under PAGA. The Net
26 Settlement Amount is allocated for payment of civil penalties and is collectively to be distributed
27 75% to the LWDA and 25% to the aggrieved employees, as described above. (Huether Dec. ¶13, Ex.
28 1 §§ 1.14, 1.15, & 1.19; Lab. Code §2699(i) [civil penalties recovered by aggrieved employees shall
be distributed as follows: 75 percent to the [LWDA] ...; and 25 percent to the aggrieved employees].

1 Plaintiff estimates the LWDA will receive approximately \$202,544.43 (\$230,059.25 x .75 to LWDA
2 = \$172,544.43 and \$40,000 x .75 to the LWDA= \$30,000). (Huether Dec. ¶59, Ex. 1 §§1.18.) As
3 set forth below, Plaintiff believes this is a fair result for the PAGA litigation.

4 **II. SUMMARY OF LITIGATION**

5 **A. The Parties**

6 Defendant Toll Global Forwarding (USA) Inc., Toll Global Forwarding SCS (USA) Inc., TGF
7 Management Group Holdco Inc. provide logistics and transportation services in California and across
8 the world. Defendant Simplified Labor Staffing Solutions, Inc. (“Simplified”), Chartwell Staffing
9 Services, Inc., Insperity PEO Services, L.P. erroneously sued as Insperity Expense Management, Inc.
10 are staffing agencies which placed employees to work at Toll warehouses. Plaintiff worked as a non-
11 exempt hourly paid employee who was placed at a Toll warehouse from on or around April 2014
12 through on or around December 10, 2019. Defendants estimate there are collectively 4,086
13 Aggrieved Employees (3,197 Simplified employees with 40,588 pay periods, 796 Chartwell
14 employees with 8,795 pay periods, and 93 Insperity/Toll employees with 6,193 pay periods).
(Huether Dec. ¶8.)

15 **B. The Complaint And Allegations**

16 On April 1, 2020, Plaintiff submitted a letter to the California Labor and Workforce
17 Development Agency (“LWDA”) to notify the LWDA pursuant to PAGA of Plaintiff’s intent to seek
18 civil penalties for violations of the Labor Code. (Huether Dec. ¶9.)

19 On April 1, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of
20 action against Defendants for (1) failure to pay wages for all time worked at minimum wage in
21 violation of labor code sections 1194 and 1197; (2) failure to pay proper overtime wages for all
22 overtime hours worked in violation of labor code section 510, 11941 and 1198; (3) failure to authorize
23 or permit meal periods in violations of labor code sections 512 and 226.7; (4) failure to authorize or
24 permit rest periods in violation of labor code section 226.7; (5) failure to reimburse employees for
25 required expenses in violation of labor section 2802; (6) failure to provide complete and accurate
26 wage statements in violation of labor code section 226; (7) failure to timely pay all earned wages and
27 final paychecks due at time of separation of employment in violation of labor sections 201, 202, and
28 203; and (8) unfair business practices, in violation of business and professions code section 17200, *et*
seq. (Huether Dec. ¶10.)

1 On August 11, 2020, Plaintiff filed a First Amended Complaint adding a PAGA claim for civil
2 penalties. (Huether Dec. ¶11.)

3 On November 9, 2020, Plaintiff filed a Second Amended Complaint. The Second Amended
4 Complaint is the operative complaint in the Action (the “Operative Complaint”). (Huether Dec. ¶12.)

5 On November 20, 2020, pursuant to Plaintiff’s request, the Court entered an Order dismissing
6 the class action allegations from the Operative Complaint, leaving only a PAGA claim. The Operative
7 Complaint alleges a claim for civil penalties pursuant to PAGA based on Defendants: (1) failure to
8 pay wages for all time worked at minimum wage in violation of labor code sections 1194, 1197 and
9 the Wage Orders; (2) failure to pay proper overtime wages for all overtime hours worked in violation
10 of labor code section 510, 11941, 1198 and the Wage Orders; (3) failure to authorize or permit meal
11 periods in violations of labor code sections 512, 226.7 and the Wage Orders; (4) failure to authorize
12 or permit rest periods in violation of labor code section 226.7 and the Wage Orders; (5) failure to
13 reimburse employees for required expenses in violation of labor section 2802; (6) failure to provide
14 complete and accurate wage statements in violation of labor code section 226; (7) failure to timely
15 pay all earned wages and final paychecks due at time of separation of employment in violation of
16 labor sections 201, 202, and 203; (8) failure to maintain temperature providing reasonable comfort in
17 violation of labor code sections 1198, 6720, and the Wage Orders; and (9) failure to provide suitable
18 seats in violation of labor code section 1198 and the Wage Orders (Huether Dec. ¶13.)

19 On August 10, 2022, the Parties participated in mediation before the Honorable Carl J. West at
20 Signature Resolution which resulted in a resolution of the claims at issue in the Action. (Huether Dec.
21 ¶14.)

22 Prior to Plaintiff’s Action, the Toll Defendants and Simplified reached a resolution of a prior
23 filed PAGA action entitled *Martinez v. Simplified Labor Staffing Solutions, et al.*, Case No.
24 19STCV05288 (“the *Martinez* Lawsuit”). The Parties agree that the *Martinez* Lawsuit overlaps with
25 the present Action with respect to the Simplified Aggrieved Employees. The Parties dispute whether
26 the *Martinez* Lawsuit released the heating and seating claims. In an effort to resolve these dispute,
27 however, the Parties agree that the Simplified Aggrieved Employees may recover PAGA penalties
28 for these claims, specifically, their claims for (1) failure to maintain temperature providing reasonable
comfort in violation of labor code sections 1198, 6720, and the Wage Orders and (2) failure to provide

1 suitable seats in violation of labor code section 1198 and the Wage Orders, which are alleged in the
2 Action here. Therefore, the Parties agree to resolve the remaining claims of the Simplified Aggrieved
3 Employees in the present Action. (Huether Dec. ¶15; *See also*, Settlement, § 2.5, *et al.*)

4 At all times, Defendants denied the allegations and contended that: they properly paid minimum
5 and overtime wages, employees were provided all required meal rest breaks and any clear violations
6 were due to actions of the employees' own volition, employees were provided itemized statements in
7 compliance with the Labor Code, all wages due and owing were promptly paid upon separation of
8 employment, they maintained appropriate temperatures at its work sites, they provided suitable
9 seating, and otherwise always complied with all applicable laws. (Huether Dec. ¶1163.)

10 **C. Production Of Directly Relevant Informal Discovery And Legal Analysis By
Parties' Counsel**

11 After filing the lawsuit, the Parties subsequently agreed to participate in a private mediation of
12 this case. In preparation for mediation, the Parties exchanged various documents and information
13 that allowed both sides to evaluate the potential exposure and potential risk, such as a review of
14 Defendants' policies and procedures related to the claims alleged in Plaintiff's Complaint, and time
15 and pay data. Specifically, Plaintiff's counsel and expert reviewed and analyzed time data for
16 approximately 2,912 aggrieved employees during the PAGA Period. Plaintiff's counsel also reviewed
17 relevant policy documents and pictures of Defendants' warehouses with details regarding Plaintiff's
18 temperature and seating claims. During this process, Plaintiff's counsel analyzed, researched, and
19 investigated the potential issues, including matters related to the calculation of PAGA damages,
20 interviews of the named Plaintiff and other Aggrieved Employees, potential trial management issues,
21 and appellate issues and risks. (Huether Dec. ¶17.)

22 On August 10, 2022, the Parties attended an all-day mediation with experienced mediator the
23 Hon. Carl J. West (Ret.) and reached an agreement in principle to resolve the action. Plaintiff and
24 Plaintiff's Counsel concluded—after considering the sharply disputed factual and legal issues
25 involved on the PAGA claims, the risks attending further prosecution, delay if the Court required
26 arbitration of the individual claims prior to proceeding on the PAGA claims, and the benefits to be
27 received pursuant to the compromise and settlement of the action as set forth in the agreement—that
28 settlement was in the best interest of the representative Plaintiff, the LWDA, and the aggrieved
employees and is fair and reasonable and furthers the purpose of the PAGA to enforce the Labor

Code. (Huether Dec. ¶18.)

III. SUMMARY OF SETTLEMENT

A. Terms Of Settlement

The Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement a copy of which is attached to the concurrently filed Declaration of Melissa A. Huether as **Exhibit "1"**.

A summary of the key terms of the Settlement is as follows:

1. Aggrieved Employees: “Aggrieved Employees” shall include all Chartwell Aggrieved Employees, Insperity/Toll Aggrieved Employees, and Simplified Aggrieved Employees. (Huether Dec. ¶59, Ex. 1, § 1.1.)
 - a. “Chartwell Aggrieved Employees” shall include all non-exempt temporary workers who were, or were alleged to be, employed by Defendant Chartwell and who worked in a Toll facility in California during the PAGA Period, except for union employees that worked solely at Toll’s Port of Los Angeles warehouse which is governed by a separate, union agreement. (Huether Dec. ¶59, Ex. 1, § 1.5.)
 - b. “Insperity/Toll Aggrieved Employees” shall include all non-exempt temporary workers who were, or were alleged to be, employed by Defendants Insperity and/or Toll who worked in a Toll facility in California during the PAGA Period, except for union employees that worked solely at Toll’s Port of Los Angeles warehouse which is governed by a separate, union agreement. (Huether Dec. ¶59, Ex. 1, § 1.6.)
 - c. “Simplified Aggrieved Employees” shall include all non-exempt temporary workers who were, or were alleged to be, employed by Defendant Simplified and who worked in a Toll facility in California during the PAGA Period, except for union employees that worked solely at Toll’s Port of Los Angeles warehouse which is governed by a separate, union agreement. (Huether Dec. ¶59, Ex. 1, § 1.7.)
2. Settlement Amount: “Gross Settlement Amount” means \$450,000, of which Toll shall pay \$400,000, Chartwell shall pay \$25,000, and Insperity shall pay \$25,000. The parties are only liable for their respective share of the Gross Settlement Amount. This is the total amount Defendants agree to pay under the Settlement. The Gross Settlement is considered “all-in” and includes the full and complete consideration for the release of all representative PAGA claims, and will be used to pay all Individual PAGA Payments, the Simplified Aggrieved Employees Individual PAGA Payment, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment. (Huether Dec. ¶59, Ex. 1 §1.13.)
3. Net Settlement Amount: “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. From the Net Settlement Amount, \$40,000 will be distributed pro rata between the Simplified Aggrieved Employees after 75% is distributed to the LWDA and the remainder of the Net Settlement Amount will be distributed pro rata among Chartwell Aggrieved Employees and the Toll/Insperity Aggrieved Employees after 75% is distributed to the LWDA. (Huether Dec. ¶59, Ex. 1 §1.19.)

The Administrator will calculate the Simplified Aggrieved Employees Individual

PAGA Payment by (a) dividing the amount of the 25% of the \$40,000 of the Net Settlement Amount (i.e., \$10,000) allocated to the Simplified Aggrieved Employees by the total number of PAGA Period Pay Periods worked by all the Simplified Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Simplified Aggrieved Employee's PAGA Period Pay Periods. The Administrator will calculate the Individual PAGA Payment for the Chartwell Aggrieved Employees and the Insperity/Toll Aggrieved Employees by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net Settlement Amount minus the \$40,000 allocated to the Simplified Aggrieved Employees (i.e., \$56,750) by the total number of PAGA Period Pay Periods worked by all the Chartwell Aggrieved Employees and Insperity/Toll Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Chartwell Aggrieved Employee and Insperity/Toll Aggrieved Employee's PAGA Period Pay Periods. The Simplified Aggrieved Employees, the Chartwell Aggrieved Employees, and the Insperity/Toll Aggrieved Employees all assume full responsibility and liability for any taxes owed on their Individual PAGA Payment or their Simplified Aggrieved Employees Individual PAGA Payment. (Huether Dec. ¶59, Ex. 1 §3.2.3.1.)

4. Plaintiff's Counsel's Attorneys' Fees and Costs: : A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$150,000.00 and PAGA Counsel Litigation Expenses Payment of not more than \$16,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (Huether Dec. ¶59, Ex. 1 §3.2.1.)
5. Settlement Administration Costs: The Parties have agreed to use Phoenix to administer the Settlement. The estimated administration costs are \$17,000. (Huether Dec. ¶59, Ex. 1 § 3.2.2.)
6. Release of Claims: Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

All Chartwell Aggrieved Employees and Insperity/Toll Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice.

All Simplified Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged for (1) failure to maintain temperature providing reasonable comfort in violation of labor code sections 1198, 6720, and the Wage Orders; and (2) failure to provide suitable seats in violation of labor code section 1198 and the Wage Orders, or reasonably could have been alleged based on these claims, based on the facts stated in the Operative Complaint and the PAGA Notice

(Huether Dec. ¶59, Ex. 1 §§5.)

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B. Notice And Distribution Of PAGA Funds

Within 30 days of the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator. The “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. (Huether Dec. ¶51, Ex. 1 §§ 1.8 & 4.2.) The Administrator will conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. (Huether Dec. ¶59, Ex. 1 §1.9 & 4.4.2.)

Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (Huether Dec. ¶59, Ex. 1 § 4.3.)

Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the Simplified Aggrieved Employees Individual PAGA Payment, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. (Huether Dec. ¶59, Ex. 1 §4.4.)

For any Aggrieved Employee whose Individual PAGA Payment or Simplified Aggrieved Employees Individual PAGA Payment check is uncashed and cancelled after the void date, which shall be 180 calendar days after mailing, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Huether Dec. ¶59, Ex. 1 §4.4.3.)

IV. ARGUMENT IN FAVOR OF APPROVAL

A. The Proposed PAGA Settlement Should Be Approved

It is well established that PAGA serves to augment the limited enforcement capability of the Labor and Workforce Development Agency by empowering employees to bring actions to enforce California’s labor standards. (*Iskanian v. CLS Transportation L.A., LLC* (2014) 59 Cal.4th 348, 383; accord *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986 [“The act’s declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring such actions themselves.”].) In the similar context of wage and hour class actions, the Courts review settlements

1 to determine whether the proposed settlement is within the range of reasonableness considering the
2 strength of the claims against the proposed settlement, the risk, expense, complexity and likely
3 duration of further litigation, the extent of discovery completed and the stage of the proceedings, and
4 the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
5 Furthermore, courts must give "proper deference to the private consensual decision of the parties"
6 because "the court's intrusion upon what is otherwise a private consensual agreement negotiated
7 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
8 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
9 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
10 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

11 In this case, the settlement was reached through arms' length bargaining, and sufficient
12 investigation was performed to allow counsel to act intelligently. (Huether Dec. ¶¶17-43.) As described
13 above, the parties thoroughly investigated and evaluated the factual strengths and weaknesses of this
14 case before reaching the proposed settlement and engaged in sufficient investigation and discovery,
15 to support the settlement. Accordingly, the settlement came only after the case was fully investigated
16 by counsel. This litigation, therefore, had reached the stage where "the Parties certainly have a clear
17 view of the strengths and weaknesses of their cases" sufficient to support the settlement. (*Boyd v.*
18 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

19 The settlement negotiations have been at all times adversarial and non-collusive in nature.
20 Indeed, continued good faith but occasionally contentious negotiations were required to ultimately
21 reach an agreement following mediation and with the significant assistance from an experienced
22 mediator. (Huether Dec. ¶¶18.) While Plaintiff believes in the merits of the case, she also recognizes
23 the inherent risks of litigation and understand the benefit of settlement and providing funds
24 immediately as opposed to delaying payment or risking an unfavorable decision on summary
25 adjudication/judgment, at trial and/or the damages awarded, and/or appeal all of which have potential
26 to eliminate any relief.

27 Further, experienced counsel, operating at arms-length, have weighed the strengths of the case
28 and examined all of the issues and risks of litigation and endorse the proposed settlement. The view
of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding

1 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
2 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661
3 F.2d 939 (9th Cir. 1981); *Boyd*, 485 F.Supp. at 617.) Counsel is experienced in similar litigation and
4 approve the settlement. (Huether Dec. ¶¶3-7.)

5 There are significant legal uncertainties associated with cases such as this as they can be
6 factually complex and require protracted litigation to resolve. A settlement is not judged solely against
7 what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide
8 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th
9 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246
10 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is
11 inherent and necessary in the settlement process ... even if the relief afforded by the proposed
12 settlement is substantially narrower than it would be if the suits were to be successfully litigated, this
13 is no bar to a class settlement because the public interest may indeed be served by a voluntary
14 settlement in which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91
Cal.App.4th at 250.)

15 **B. The Proposed Settlement Is A Reasonable Compromise Of Claims**

16 To evaluate a settlement, the trial court must receive "basic information about the nature
17 and magnitude of the claims in question and the basis for concluding that the consideration being
18 paid for the release of those claims represents a reasonable compromise." (See *Kullar v. Foot Locker*
19 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) To assist the Court with determining if the proposed
20 settlement is within a range that is fair, reasonable, and adequate, Plaintiff's counsel analyzed the
21 value of pleaded class allegations. As stated above, the settlement was reached only after
22 exchanging information prior and conducting legal analyses of both Plaintiff's and Defendants'
23 theories.

24 Based on the informal discovery produced by Defendants, Defendants estimate there are
25 3,4,086 Aggrieved Employees (3,197 Simplified employees with 40,588 pay periods, 796 Chartwell
26 employees with 8,795 pay periods, and 93 Insperity/Toll employees with 6,193 pay periods).
27 (Huether Decl., ¶ 23.)

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1 **Failure to Pay Minimum Wages for All Hours Worked in Violation of Labor Code**
2 **Sections 1194 and 1197 and Failure to Pay Overtime Wages for Overtime Hours Worked in**
3 **Violation of Labor Code Sections 510 and 1197:**

4 In the PAGA exhaustion letter to the LWDA, as well as the Complaint, Plaintiff alleged
5 Defendants failed to compensate her and other Aggrieved Employees for time spent undergoing off
6 the clock security checks prior to entering Defendants' premises and thus prior to clocking in for
7 their shifts and after clocking out for their shifts for meal periods or for the end of their shift.
8 Plaintiff also alleged that Defendants rounded Plaintiff and other Aggrieved Employees' time
9 punches to the nearest quarter hour to benefit Defendants. As a result of this off the clock security
10 checks and Defendants' rounding practice, Plaintiff alleged that she and other Aggrieved
11 Employees were not paid for all hours worked at either the minimum wage or, if applicable, the
12 overtime wage. (Huether Dec. ¶24.)

13 Defendants would likely contend that the employees' security checks were on the clock and/or
14 that all security checks are necessary to maintain safety and that more importantly that the checks
15 only took mere seconds and that time is de minimis and that any rounding which occurred was to the
16 benefit of the Aggrieved Employees or net neutral. Plaintiffs' own analysis did also show that across
17 all Defendants in 30% of shifts, the rounding did operate to the benefit of the Aggrieved Employee.
18 (Huether Dec. ¶25.)

19 **Failure to Provide All Meal Periods Pursuant to Labor Code Section 512:**

20 Plaintiff alleged that Defendants failed to provide herself and other Aggrieved Employees
21 with legally compliant meal periods prior to the end of the fifth hour of work and/or failed to provide
22 meal periods that were at least 30 minutes or duty-free. Specifically, Plaintiff alleged that if he and
23 other Aggrieved Employees wanted to leave the premises for a meal period, they were required to
24 clock out, undergo a security check off the clock, return to the premises and undergo another security
25 check and then clock back in, all within the allotted 30 minutes thus making it impractical to leave
26 the premises. In the event Plaintiff and the Aggrieved Employees did leave the premises, their meal
27 period was less than net 30 minutes as a result of the security checks. (Huether Dec. ¶26.)

28 Defendants would likely contend that the employees' security checkers were on the clock
 and/or that all security checks are necessary to maintain safety and that more importantly that the

1 checks only took mere seconds and that time is *de minimis*. Further, Defendants would likely argue
2 that undergoing security checks did not result in short meal periods and that all Aggrieved Employees
3 were permitted to leave the premises if they chose. Defendants would also argue that in the Toll
4 warehouses, procedures and policies were put into place to ensure that employees all took 30 minutes
5 for a meal period, and if shorter breaks were taken, they were entirely voluntary. (Huether Dec. ¶27.)

6 **Failure to Provide All Rest Periods Pursuant to Labor Code Section 226.7:**

7 Plaintiff alleged that Defendants maintained a policy and practice of requiring Plaintiff and
8 other Aggrieved Employees to remain on the premises during rest periods thus rendering every rest
9 period a violation. Plaintiff argued that she and other Aggrieved Employees should be off duty and
10 free to leave the premises during their rest periods and Defendants failed to permit compliant rest
11 periods. As a result, Plaintiff contends she and other Aggrieved Employees are owed a rest period
12 premium for those rest periods which they could not leave the premises. (Huether Dec. ¶28.)

13 Defendants would likely argue that it did not have a policy requiring Plaintiff and other
14 Aggrieved Employees to remain on the premises during rest periods, that if an employee chose to
15 remain on the premises, it was their choice, and that even if it had such a policy it would not have
16 been illegal. Further, Defendants would argue that they had a fully compliant rest period policy and
17 employees took their rest periods. (Huether Dec. ¶29.)

18 **Failure to Indemnify Employees for Losses and Expenditures incurred as part of their
19 employment Pursuant to Labor Code Section 2802:**

20 Plaintiff alleged that Defendants required she and other Aggrieved Employees to use their
21 personal cell phones for business purposes and failed to provide reimbursement for such use. (Huether
22 Dec. ¶30.)

23 Defendants would likely argue that they did not required Plaintiff or any Aggrieved
24 Employees to use their personal cell phones for any purpose. Further, Defendants provided policies
25 which strongly suggest that Aggrieved Employees were not permitted to use their cell phones in the
26 warehouse for it is a safety hazard. (Huether Dec. ¶31.)

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1 **Failure to Provide Complete and Accurate Wage Statements Pursuant to Labor Code**

2 **Section 226:**

3 Based on the foregoing allegations of unpaid minimum and overtime wages and meal and rest
4 period violations, Plaintiff alleged Defendants failed to provide complete and accurate wage
5 statements based on unpaid minimum and overtime wages and meal rest period premiums owed
6 which were not reflected in the wage statements. (Huether Dec. ¶32.)

7 However, this violation was subject to the defenses for the unpaid wages and meal period and
8 rest period violations. (Huether Dec. ¶33.)

9 **Failure to Timely Pay All Wages After Separation of Employment Pursuant to Labor**

10 **Code Sections 201 and 202:**

11 Based on the foregoing allegations of unpaid wages and meal and rest period violations,
12 Plaintiff alleged Defendants failed to timely pay all wages to employees following separation of
13 employment by not paying employees unpaid wages and meal and rest period premiums owed.
14 However, this violation was subject to the defenses for the unpaid wages and meal and rest period
15 violations because it was derivative. Defendants would also likely argue that it did not willfully fail
16 to pay wages due at termination and therefore it did not violate Labor Code §203. (Huether Dec. ¶34.)

17 **Failure to Maintain Temperature Providing Reasonable Comfort:**

18 Plaintiff also alleged that Defendants failed to maintain a reasonable temperature in the
19 warehouses in which Plaintiff and other Aggrieved Employees worked in. Labor Code 6720 required
20 the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat
21 illness standard. Cal/OSHA’s draft standard stated that it applied to “all indoor work areas where
22 temperature equals or exceeds 82 degrees Fahrenheit when employees are present.” Plaintiff alleged
23 that she and other Aggrieved Employees were subjected to temperatures exceeding 82 degrees
24 Fahrenheit while they worked for Defendants. (Huether Dec. ¶35.)

25 Defendants would likely argue that they had proper protocols in place to maintain a reasonable
26 temperature and further maintain significant policies relating to the heat and potential heat illness and
27 heat stroke. Finally, Defendants maintained that it had the proper infrastructure to maintain a
28 reasonable temperature and that it did maintain reasonable temperatures. Defendants would likely
argue that it provided evidence of such protocols and practices to Plaintiff’s counsel. (Huether Dec.

¶36.)

Failure to Provide Suitable Seating

Plaintiff alleged that Defendants could have provided suitable seats for Aggrieved Employees but failed to do so. Plaintiff contends that when not engaged in the active duties of his employment and the nature of the work required standing, Defendants failed to place an adequate number of suitable seats in reasonable proximity to the work area and further failed to permit Aggrieved Employees to use such seats when it did not interfere with the performance of their duties. Here, Defendants contended that it placed an adequate number of chairs in the work area. Defendants further would likely argue that it was not feasible to place additional seats in the work area if it were required because seats could not be placed in certain areas of the warehouse otherwise it would be a safety issue. Finally, Defendants could argue that the job duties could not be done from a seat and therefore they were not required to provide additional seats. (Huether Dec. ¶37.)

Applying further significant discounts for the risks associated with the action (including but not limited to, the risk that the Court finds the action is unmanageable, the risk that the Court exercises its discretion to lower the penalties awarded, the risk of losing at trial, and the risks inherent in *Viking River Cruises*) and applying further discounts for Defendants' evidenced compliance with some sections of the California Labor Code, this settlement for \$450,000 is within a reasonable range, especially considering the defenses Defendants raised by properly paying wages for all time worked, Defendants' policies and practices regarding heat illness, issuing legally compliant meal and rest period policies during the PAGA period and type of violations potentially do not give rise to penalties pursuant to Labor Code sections 226 or 203. (Huether Dec. ¶ 38.)

Moreover, the proposed Settlement, even with deductions, provides a substantial sum to the Aggrieved Employees. The Settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA

1 penalties of \$10,000.00 for class of approximately 3,000 members). (Huether Dec. ¶39.)

2 Importantly however, a number of courts have found that the “subsequent” penalty under
3 PAGA applies only after a court or the Labor Commissioner determines that the employer has violated
4 the Labor Code. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord*
5 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009)
6 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are not subject
7 to heightened penalties for subsequent violations unless and until a court or commissioner notifies
8 the employer that it is in violation of the Labor Code”); *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157,
9 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil penalties” because the defendant
10 was not given notice by the Labor Commissioner when the “subsequent” violations occurred); *Chen*
11 *v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D.
12 Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are
13 committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine*
14 *Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec.
15 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
16 violations unless and until a court or commissioner notifies the employer that it is in violation of the
17 Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008). When evaluating
18 Defendant’s exposure here, Plaintiff’s counsel was forced to consider this line of cases. (Huether Dec.
19 ¶40.)

20 Defendants also argued that PAGA penalties would be limited. Defendants argued that even
21 if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to consider
22 the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal.
23 Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty
24 reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Thus,
25 Defendants argued that even if the Plaintiff was able to establish any violation of the Labor Code,
26 there is a likelihood that a further reduction of the penalty to \$5 per pay period as approved in
27 *Carrington*, or lower, would apply given Defendants’ compliance with the Labor Code as discussed
28 above. Plaintiff was also forced to consider that the Simplified Aggrieved Employees only had viable
claims for suitable seating and failure to maintain reasonable temperature. For the Simplified

1 Aggrieved Employees, it was likely that there was only a violation for failing to maintain reasonable
2 temperature during the summer months which is only approximately 6 months of the PAGA Period
3 (or 30% of the PAGA Period). (Huether Dec. ¶41.)

4 Plaintiff understood Defendants' position could have been, using the most recent decisions
5 on the topic of evaluating the value of a PAGA claim that it is likely Defendants' maximum
6 exposure was actually only **\$1,640,858.00**. Plaintiff separately valued the Chartwell Aggrieved
7 Employees and Toll/Insperity Aggrieved Employees claims as follows: \$100.00 per pay period X
8 14,988 pay periods (8,795 Chartwell pay periods + 6,193 Toll/Insperity pay periods)=\$1,498,800,
9 as these groups of aggrieved employees suffered from the all of the violations alleged in the
10 Operative Complaint. With respect to the value for the claims for the Simplified Aggrieved
11 Employees, which is necessarily limited to failure to provide suitable seating and failure to maintain
12 reasonable temperatures, Plaintiff reasonably estimated the reasonable value to be \$142,058
13 (calculated as \$5 per pay period x 40,588 pay periods x 30% discount for temperature claim
14 [described above]). Defendants could have argued that this Court would use the Carrington
15 valuation as a ceiling for assessing PAGA penalties and that even this was maximum exposure is
16 overinflated (i.e., allocating \$5 a pay period resulting in an estimated exposure of \$276,135.00).
(Huether Dec., ¶ 42.)

17 Accordingly, the gross PAGA penalty payment is highly reasonable in light of the risks and
18 uncertainties associated with the PAGA claims in this case. The Settlement commits Defendants to
19 pay a sum large enough to punish Defendants for alleged violations and to deter such alleged conduct
20 in the future. At the same time, in light of the alleged violations and defenses thereto, it is not so large
21 as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed settlement is fair,
22 reasonable, and in the best interest of the state of California and the Aggrieved Employees. (Huether
23 Dec. ¶ 43.)

24 Practically speaking, if Plaintiff continued litigating this matter, Plaintiff, LWDA, and
25 employees potentially could have received nothing if the Court had agreed with Defendants' position
26 especially in light of the volatility of this area of law, and the aforementioned defenses. The settlement
27 is reasonable in light of the risks involved in this case—including the prospect of a potential adverse
28 summary adjudication ruling, defenses to the case, potential appeal, and potential costs which could

1 be forced on our client if Plaintiff was not successful. (Huether Dec. ¶ 44.)

2 Plaintiff's Counsel is convinced that the proposed settlement is fair based on the negotiations
3 and a detailed knowledge of the issues present in this action. The length and risks associated with a
4 motion for summary adjudication, trial, and other normal perils of litigation have impacted the value
5 of the claims and were all weighed in reaching the proposed settlement. In light of the above, the
6 proposed Settlement is well within the range of reasonableness and should be granted approval.
7 Plaintiff believes that in providing employees with relief and obtaining penalties for the LWDA, this
8 settlement furthers the purpose of PAGA to enforce compliance with the Labor Code and should be
9 approved. (Huether Dec. ¶ 45.)

10 **V. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED**

11 Counsel seeks \$150,000, one-third of the Gross Settlement Amount, in fees for the time spent
12 litigating this matter and reimbursement of expenses of \$12,940.75 incurred in the prosecution of
13 this action. The request is for fair compensation for undertaking complex, risky, expensive, and
14 time-consuming litigation on a contingent fee basis.

15 **A. Plaintiff's Attorneys' Fee Request Of \$150,000, 33% Of The Settlement Sum, Is Proper Under The Common Fund Doctrine**

16 California state and federal courts have recognized that in actions creating a common fund
17 benefiting others as well as a plaintiff, an appropriate method for determining an award of attorneys' fees
18 is based on a percentage of the total value of benefits provided by the litigation. (*Laffitte v. Robert Half*
19 *Int'l Inc.* (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co.*
20 *v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759,
21 769.) Such "fee spreading" assures that all those benefited by the litigation pay their fair share of
22 obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.)

23 In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein
24 Counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California
25 Supreme Court approved the use of the percentage of fund or common fund method to award one-third
26 of the settlement amount or \$6,333,333.33 to Counsel for attorneys' fees. The Court stated:

27 Whatever doubts may have been created by *Serrano III*, *supra*, 20 Cal.3d 25,
28 [], or the Court of Appeal cases that followed, we clarify today that use of the
percentage method to calculate a fee in a common fund case, where the award
serves to spread the attorney fee among all the beneficiaries of the fund, does

not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method - including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Laffitte*, 1 Cal.5th at 503.) Under the “common fund” doctrine, “a litigant or 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.” (*Boeing*, 444 U.S. at 478.) The Supreme Court explained: “The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants’ expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.” (*Id.*) Thus, the common fund doctrine ensures that each beneficiary of the settlement contributes proportionately to the payment of the attorneys’ fees recovered from monetary payments that the prevailing party recovered in the lawsuit. (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt. L.P.* (9th Cir. 2002) 301 F.3d 1115.)

In common fund cases, the percentage approach is preferable to the lodestar because: (1) it aligns the interests of Counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Laffitte*, 1 Cal.5th at 486-487; see *Lealao*, 82 Cal.App.4th at 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375, 1378-79.)

A fee of \$156,750 which constitutes one-third of the gross settlement is within the range of reasonableness. (See *Laffitte*, 1 Cal.5th at 503-504 [approving common fund method used for attorneys’ request of one-third of settlement].) Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (See *In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) Because Counsel's requested fee is reasonable and falls well within the historical range of attorney’s fee awards under the common fund theory, the Court should approve

the requested fees as reasonable pursuant to the common fund approach.

B. Plaintiff's Fee Request Is Reasonable Under The Lodestar Method

In a common fund settlement “[t]he lodestar method is merely a cross-check on the reasonableness of a percentage figure.” (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050, n.5.) In this case, consideration of Counsel’s lodestar as a cross-check to the percentage figure also strongly supports the reasonableness of the requested fee award. The base amount is then adjusted in light of various factors. (*Serrano v. Priest*, 20 Cal.3d at 48.)

Counsel’s total unadjusted lodestar in this case as of the date of this motion is approximately of \$94,772. (Huether Dec. ¶54.) Counsel’s hourly rates are reasonable, Counsel’s hours spent are reasonable, and Plaintiff would even be entitled to a multiplier to account for the successful result in this action and to compensate Plaintiff and his counsel for the contingent risk inherent in the litigation and for the delay in receiving fees. The breakdown of the hours worked by counsel in this matter is set forth as follows:

Attorney	Hours	Hourly Rate	Total
Joseph Lavi	18.5	\$925	\$17,112.50
Vincent C. Granberry	65	\$675	\$43,875.00
Anwar Burton	17.3	\$600	\$10,380.00
Melissa A. Huether	39.4	\$575	\$22,655.00
Danielle E. Montero	1.5	\$500	\$750.00
Total	141.7	--	\$94,772.50

(Huether Dec. ¶¶ 49-54.)

The total maximum fee agreed to by Defendants is One Hundred Fifty Thousand Dollars (\$150,000.00). Based on the collective hours of work (141.7 hours) reflected in Plaintiff’s Counsel’s records the estimated lodestar is approximately \$94,772.50. Accordingly, counsel’s hourly rates are reasonable and counsel’s hours spent are reasonable to compensate Plaintiff and his counsel for the contingent risk inherent in the litigation. Accordingly, Counsel’s hourly rates are reasonable, Counsel’s hours spent are reasonable, and an additional multiplier of 1.6 is justified in this matter to account for the successful result in this action and to compensate Plaintiff and her counsel for the

1 contingent risk inherent in the litigation. Applying a very modest 1.6 multiplier brings Class
2 Counsel's lodestar to \$151,636.00. (Huether Dec. ¶¶49-54.)

3 **C. Counsel's Hourly Rates and Hours Are Reasonable**

4 The hourly rates of the attorneys—\$500 for Danielle E. Montero, \$575 for Melissa Huether,
5 \$600 for Anwar Burton; \$675 for Vincent Granberry, and \$925 for Joseph Lavi—are in line with
6 rates approved for attorneys in this region with similar experience. (Huether Dec. ¶¶49-54; 62-64,
7 **Exhibits 4-6** [printouts of California firms from 2014 NLJ Survey of Attorney Fees, 2008 NLJ Survey
8 of Attorney Fees, and Laffey Matrix].) A reasonable hourly rate is the prevailing rate charged by
9 attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler*
10 (2000) 22 Cal. 4th 1084, 1095.) When determining a reasonable hourly rate, courts may consider
11 factors such as the attorney's skill and experience, the nature of the work performed, the relevant area
12 of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998)
13 61 Cal. App. 4th 629, 632.) Class Counsel's skill and experience support their hourly rates. (Huether
14 Dec. ¶¶4-5; 49-54 [describing experience in employment law and class actions with Ms. Huether an
15 attorney out of law school in 2017 and in practice with Lavi & Ebrahimian, LLP since April 2021,
16 describing Ms. Montero an attorney out of law school in 2019, Mr. Burton as an attorney out of law
17 school in 2007, Mr. Granberry an attorney out of law school in 2010, and Mr. Lavi a founding partner
18 and out of law school and practicing since 2000].) Other attorneys working in California courts charge
19 comparable if not higher rates as indicated in the printouts of California firms' billing rates from the
20 2014 National Law Journal Survey showing partner rates up to \$1,195 and associate rates up to \$750.
21 (Huether Dec. ¶62, **Exhibit 4** [printouts from 2014 National Law Journal Survey for California firms
22 showing a high rate for partners of \$1,195 and high for associates of \$725]; Huether Dec. ¶63, **Exhibit**
23 **5** [2008 National Law Journal Survey showing 2008 fees of California partners with high of \$980 and
24 associate high of \$570]; see, e.g., *Richard v. Ameri-Force Mgmt. Servs., Inc.*, Case No. 37-2008-
25 00096019 (San Diego Super. Ct., August 27, 2010) [\$695 to \$750 an hour for partners]; *Barrera v.*
26 *Gamestop Corp.*, Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) [\$700 an hour for partners]; and
27 *Anderson v. Nextel Retail Stores, LLC*, Case No. CV 07-4480 (C.D. Cal. June 20, 2010) [\$655 to
28 \$750 an hour for partners].)

1 Plaintiff's Counsel's rates are also in line with the Laffey Matrix which states a rate of \$764
2 per hour for attorneys out of law school 11-19 years and \$919 per hour for attorneys out of law school
3 over 20 years. (Huether Dec. ¶63, **Exhibit 6** available at <http://www.laffeymatrix.com/see.html>.)
4 California Courts have applied the Laffey Matrix with adjustments to the specific California locality
5 where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v.*
6 *Rankin* (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with
7 upward 9 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on
8 Locality Pay Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510
9 VRW) 365 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for
10 San Francisco based on difference between D.C. Area 's +15.98 locality pay compared to San
11 Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan
12 Pay Tables."].) Here, Plaintiff's Counsel's offices are located in Los Angeles County. For 2018, the
13 Locality Pay Tables (and Judiciary Salary Plan Pay Tables referred to in *In re HPL Techs., Inc.*), state
14 a 2.35 percent increase for the Los Angeles-Long Beach, CA area which includes the following
15 counties: Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino
16 County, Santa Barbara County, and Ventura County. (Huether Dec. ¶¶65-66, **Exhibits 7-8** [2018
17 Locality Pay Tables for Washington-Baltimore-Arlington and Los Angeles-Long Beach, CA
18 available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/)
19 [schedule/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/)]; (Huether Dec. ¶¶67-68, Exhibits 9-10) [Judiciary Salary Plan Pay Tables available at
20 <http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates>]; (Huether Dec. ¶69,
21 Ex. 11) [2018 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA
22 area available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/)
23 [wages/2018/locality-pay-area-definitions/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/)].) In applying the 2.35 locality increase for attorneys
24 working in Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino
25 County, Santa Barbara County, and Ventura County over the Washington-Baltimore area stated in
26 the Laffey Matrix, the Laffey Matrix states the following relevant rates: \$782 for attorneys 11 to 19
27 years out of law school and \$941 for attorneys 20 plus years out of law school.

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1 **1. Counsel's Total Hours Are Reasonable**

2 In determining a lodestar, reasonable hours include, in addition to time spent during litigation,
3 the time spent before the action is filed, including time spent interviewing the clients, investigating
4 the facts and the law, and preparing the initial pleadings. (See *New York Gaslight Club, Inc. v. Carey*
5 (1980) 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend
6 the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.)

7 Counsel has spent approximately 141.7 hours on this case. (Huether Dec. ¶¶49-54.) In
8 summary form, counsel's many tasks included the following: pre-filing investigation, legal research,
9 and research of Defendants and their operations; communicating with client regarding her
10 responsibility in bringing the action, the facts of her case, her employment, her work environment,
11 his documents and Defendants' policies and procedures; drafting pleadings and notices; drafting
12 communications with the LWDA; reviewing Plaintiff's file and determining liability and evaluating
13 claim and defense strengths and weaknesses; legal research of case law and wage orders regarding
14 applicable claims and defenses; reviewing and meeting and conferring over Defendants' arbitration
15 agreements; meeting and conferring over directly relevant informal discovery; evaluating
16 Defendants' policies; determining case strategy; communicating with Defendants' Counsel;
17 evaluating data provided in informal discovery; calculating PAGA damages; negotiating settlement
18 and settlement documents; communicating with the administrator and responding to administrator's
19 inquiries; preparing the motion for approval of PAGA and supporting documents. All of the tasks and
20 work performed were reasonable and necessary to the prosecution of this case and justified,
21 particularly in light of the result achieved. (Huether Dec. ¶36.) Combining Plaintiff's counsels' hours
22 and their hourly rates in this case amounts to a total of 141.7 hours (see below for a breakdown of the
23 lodestar), and calculating individual hourly contributions amounts to a total lodestar of \$94,772.50.
24 Counsel is seeking a \$150,000 award of attorneys' fees in connection with this matter. (Huether Dec.
25 ¶46.)

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1 **1. A multiplier of 1.6 is appropriate to account for the successful result in the**
2 **action and to compensate plaintiff and his counsel for the contingent risk**
3 **assumed by counsel and delay in receiving fees**

4 The factors to consider in determining the multiplier include: (1) time and labor required; (2)
5 contingent nature of the fee agreement; (3) whether litigation precluded other employment by the
6 attorneys; (4) the experience, reputation, and ability of the attorneys who performed the services, and
7 the skill displayed; (5) the amount involved and the results obtained; and (6) the informed consent of
8 the client to the fee agreement. (See *Serrano v. Priest*, 20 Cal. 3d at 49; *Dunk*, 48 Cal.App.4th at 1810
9 n.21; *Glendora Commonwealth. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 474.)

10 **Contingent Risk of Litigation:** The rationale for a fee enhancement in contingency cases is
11 to not only compensate the attorney for legal services, but to provide fair compensation for the risk
12 and delay of not being paid at all. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133.) In
13 counsel's experience, the risks of prosecuting a representative action case such as this are significant.
14 Plaintiff's Counsel has expended time in the prosecution of this litigation on a contingency basis
15 without any direct compensation and having advanced litigation costs, carrying the risk that this time
16 and the current out-of-pocket costs would be lost if the case were not resolved successfully.

17 **Litigation Precluded Other Employment:** As relatively small law firms, Plaintiff's Counsel
18 can only properly litigate a limited number of cases at one time. The professional demands of this
19 case were not insignificant. There was motion practice, which required significant attorney time and
20 attention. Plaintiff's Counsel was necessarily precluded from working on other cases while working
21 on this case. (Huether Decl. ¶¶ 49-54; [L&E 141.7 hours]).

22 Therefore, Plaintiff's counsel contends that the fee request in the amount of \$150,000 in fair
23 and reasonable Applying a modest 1.6 multiplier brings Plaintiff's counsel's lodestar to \$151,636.00
24 slightly exceeding the fees sought in the action.

25 **2. Plaintiff's Costs Request Of \$12,940.75 Is Reasonable**

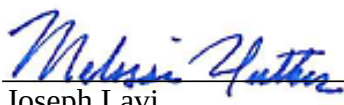
26 Plaintiff's Counsel requests \$12,940.75 in costs in this matter. This amount is reasonable and
27 incurred in the litigation of this matter. (See Huether Dec. ¶57; ¶60, **Exhibit 2.**) All costs were
28 reasonably incurred in prosecution of the lawsuit and paid on a contingency basis. The majority of
 the costs were associated with mediation (\$5,450.00) and filing of the case (\$1,435), and the
 remainder was reasonably incurred in prosecution of the lawsuit. (*Id.*)

1 **VI. CONCLUSION**

2 The PAGA settlement is fair, adequate, and reasonable. It will result in fair payment
3 considering the risks and defenses; it is non-collusive; and it was achieved as the result of informed,
4 extensive, and arms' length negotiations conducted by counsel for respective parties who are
5 experienced in wage and hour representative litigation. For the foregoing reasons, the parties
6 respectfully request that the Court grant approval of the proposed PAGA Settlement.

7 Date: April 24, 2023

8 Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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10 By: 
11 Joseph Lavi
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13 Melissa A. Huether
14 Attorneys for Plaintiff Bridgett Watson
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