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8 Attorneys for Plaintiff Cristina Dennis, on behalf of herself and all "aggrieved employees"
9 pursuant to Labor Code § 2698 et seq.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF RIVERSIDE**

12 CRISTINA DENNIS, on behalf of herself
and all "aggrieved employees" pursuant to
13 Labor Code § 2698 et seq.,

14 Plaintiffs,

15 v.

16 PARKER PALM SPRINGS, LLC, a
Delaware limited liability corporation, and
17 DOES 1 through 10, inclusive,

18 Defendants.
19
20
21
22
23
24

CASE NO: PSC2002340

Assigned to Hon. Sunshine Sykes, Dept. 6

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

Date: August 25, 2021

Time: 8:30 a.m.

Dept.: 6

Reservation ID #: 517075065933

Complaint Filed: June 5, 2020

25 **PLEASE TAKE NOTICE THAT** on August 25, 2021 at 8:30 a.m., or as soon thereafter
26 as the matter may be heard, in Department 6 of the above-entitled Court, located at 4050 Main
27 Street, Riverside, CA 92501, Plaintiff Cristina Dennis will and hereby does move unopposed for
28 an Order and Judgment: (1) granting approval of the proposed settlement of claims brought

1 pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”)
2 set forth in the Parties’ Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement
3 Agreement and Limited Release (“Settlement Agreement”); (2) appointing ILYM Group, Inc. as
4 the Settlement Administrator and approving payment of its fees of \$7,500 from the Total Monetary
5 Settlement Amount; (3) directing disbursement of the PAGA Settlement Fund pursuant to the terms
6 of the Settlement Agreement; (4) directing payment of attorneys’ fees of \$81,666.67 and litigation
7 costs in the amount of \$8,593.13 from the Total Monetary Settlement Amount to Plaintiff’s counsel;
8 and (5) directing payment of Plaintiff’s Service Award from the Total Monetary Settlement
9 Amount in the amount of \$7,500.

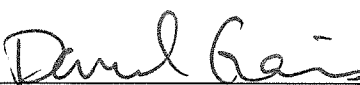
10 This motion will be based on this Notice, the supporting memorandum of points and
11 authorities, the parties’ Settlement Agreement, the Declarations of Daniel F. Gaines and Plaintiff
12 Dennis, the documents and records on file in this matter, and such additional arguments, authorities,
13 and evidence and other matters as may be presented by the parties hereafter.

14 The Court will make a tentative ruling on the merits of this matter by 3:00 p.m. on the court
15 day prior to the hearing. Tentative rulings will be available on the Internet or by calling 1-760-904-
16 5722. To view go to: <http://www.riverside.courts.ca.gov> and click on the tentative ruling link. The
17 tentative ruling shall become the ruling of the Court unless, by 4:30 p.m. on the court day before
18 the scheduled hearing, a party gives notice of intent to appear to all parties and the court. The notice
19 of intent to appear must be given either in person or by telephone. Where notice of intent to appear
20 has been properly given, or upon direction of the Court, oral argument will be permitted.

21 Date: July 13, 2021

Respectfully submitted,

22 GAINES & GAINES, APLC
23

24 By: 
25 DANIEL F. GAINES
26 Attorneys for Plaintiff
27 CRISTINA DENNIS
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Cristina Dennis (“Plaintiff”) respectfully moves this Court for an Order and
4 Judgment granting approval of the proposed Settlement Agreement of the above-captioned lawsuit
5 against Defendant Parker Palm Springs, LLC (“Defendant”). The Settlement Agreement proposes
6 to settle all claims for penalties under PAGA predicated on claims alleged by Plaintiff for
7 Defendant’s failure to provide rest periods, or compensation in lieu thereof, failure to provide
8 complete and accurate wage statements, and failure to timely pay wages upon termination during
9 the Settlement Period (March 23, 2019 through the date of court approval of the Settlement) to
10 Plaintiff and Aggrieved Employees (individuals employed by Defendant in California as non-
11 exempt hourly employees during the Settlement Period). As of March 8, 2021, there were 322
12 Aggrieved Employees who worked 8,913 pay periods during the Settlement Period; these numbers
13 are anticipated to increase through the date of Court approval.

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

22 The value achieved by the Settlement Agreement may be gleaned from the fact that the
23 LWDA and the 322 Aggrieved Employees encompassed by the Settlement Agreement will receive
24 no less than \$139,740.20 under the terms of the Settlement, which, pursuant to the operative statute,
25 shall be allocated “75 percent to the Labor and Workforce Development Agency . . . and 25 percent
26 to the Aggrieved Employees.” *See Cal. Lab. Code* § 2699(i). This is a reasonable recovery, not
27 only because further litigation may have resulted in a net-zero recovery based on the defenses
28 asserted by Defendant, but because the amount secured by Plaintiff is sizable and in line with

1 similar settlements of these types of claims under PAGA. Declaration of Daniel F. Gaines (“Gaines
2 Decl.”) at ¶ 27. It is also important to underscore that all penalty amounts paid to Aggrieved
3 Employees will be an unexpected windfall, as employees typically do not bring individual lawsuits
4 asserting only PAGA penalties. Gaines Decl. at ¶ 28.

5 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
6 Court enter the Order and Judgment submitted herewith.

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

8 **A. The Parties**

9 Defendant operates the Parker Palm Springs, a boutique hotel in Palm Springs, California.
10 Gaines Decl. at ¶ 8. Defendant employed Plaintiff from December 2019 through February 2020 as
11 a non-exempt hourly-paid bartender. Gaines Decl. at ¶ 9. The Aggrieved Employees are all
12 individuals employed by Defendant in California as non-exempt hourly employees during the
13 Settlement Period. Gaines Decl. at ¶ 10.

14 **B. The Claims Asserted**

15 Plaintiff asserts a single claim under PAGA—that Defendant failed to provide rest periods,
16 or compensation in lieu thereof, failed to provide complete and accurate wage statements, and failed
17 to timely pay premium wages upon termination to Plaintiff and Aggrieved Employees. Gaines Decl.
18 at ¶ 11.

19 Plaintiff seeks civil penalties pursuant to PAGA for Defendant’s alleged Labor Code
20 violations. Gaines Decl. at ¶ 12.

21 **C. Procedural Posture**

22 On March 23, 2020, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by
23 online filing with the LWDA and by certified mail, return receipt requested, to Defendant of the
24 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
25 to support the alleged violation. Gaines Decl. at ¶ 13; **See Exhibit B** to Gaines Decl. On June 5,
26 2020, and after the LWDA declined to take action within the statutorily permissible time with
27 respect to Plaintiff’s March 23, 2020 letter, Plaintiff filed her representative action complaint.
28 Gaines Decl. at ¶ 14.

1 Plaintiff submitted the Settlement Agreement, this Motion, and all supporting documents to
2 the LWDA via online upload on July 13, 2021 concurrently with the filing of this Motion. Gaines
3 Decl. at ¶ 15; *See Exhibit C.*

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

5 Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor
6 Code violations, evaluating the strength and value of the PAGA claims in preparation for a
7 resolution of this Action. Gaines Decl. at ¶ 16.

8 Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's
9 employee file, time cards, and wage statements, (ii) policy documents relating to the employment
10 of Plaintiff and other Aggrieved Employees, (iii) time cards and pay records of a sample of
11 Aggrieved Employees; and (iv) data relating to the number of alleged violations and the value of
12 the recoverable penalties. Gaines Decl. at ¶ 17.

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

20 Based on Plaintiff's Counsel's experience in litigating similar "representative" wage and
21 hour claims, the degree of investigation that was conducted, and the amount of data that was
22 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the
23 strength of this claim for purposes of settlement. Gaines Decl. at ¶ 19.

24 **E. Settlement Negotiations**

25 On April 8, 2021, the Parties participated in a Zoom mediation session with respected
26 mediator Todd A. Smith, Esq. During the mediation, the parties engaged in arm's-length
27 negotiations that successfully resulted in a resolution of the PAGA claim asserted in the action.
28 Gaines Decl. at ¶ 20.

1 **F. The Proposed Settlement**

2 The Parties jointly prepared and executed the Settlement Agreement. Gaines Decl. at ¶ 21;
3 **Exhibit D** to Gaines Dec. The Settlement Agreement sets forth all terms of the Settlement reached
4 by the Parties, including the following key points:

5 1. Defendant agrees to settle this matter for the payment of Two Hundred Forty-Five
6 Thousand Dollars (\$245,000.00) (hereinafter the “Total Monetary Settlement Amount”), which
7 shall be all inclusive, encompassing (i) all payments to the LWDA and Aggrieved Employees, (ii)
8 any and all costs of third party administration of the settlement, (iii) Plaintiff’s Counsel’s attorneys’
9 fees and costs of suit, and (iv) a general release payment to Plaintiff (“Plaintiff’s Service Award”).
10 See Settlement Agreement at ¶ 21.

11 2. The total sum available for payment of PAGA penalties shall be calculated by
12 deducting \$90,259.80 for the payment of Plaintiff’s Counsel’s fees and costs (\$81,666.67 in fees
13 and \$8,593.13 in costs), \$7,500 for the payment of Plaintiff’s Service Award and the costs of
14 administration (\$7,500) from the \$245,000 Total Monetary Settlement Amount, yielding
15 approximately \$139,740.20. Seventy-five percent (75%) of this amount, or \$104,805.15, shall be
16 distributed to the LWDA, and the remaining twenty-five percent (25%) or \$34,935.05, shall be
17 distributed to the Aggrieved Employees. See Settlement Agreement at ¶ 11.

18 3. All individuals employed by Defendant in California as a non-exempt hourly
19 employee during the Settlement Period will receive a pro rata share of the \$34,935.05 allocated to
20 Aggrieved Employees which shall be distributed based on the number of pay periods each
21 Aggrieved Employee worked for Defendant in California during the Settlement Period. See
22 Settlement Agreement, at ¶ 14. Although these calculations will not be made until after approval,
23 a rough estimation of the value to the approximately 322 individuals falling within the definition
24 of “Aggrieved Employee” may be gleaned from the fact that an equal division would provide about
25 \$108.49 to each Aggrieved Employee (with an anticipated lowest payment of \$3.92 to those
26 Aggrieved Employees who worked one pay period and the highest payment of \$ 352.76 to those
27 Aggrieved Employees who worked 90 pay periods), net of payments to the LWDA, the Settlement
28 Administrator, attorneys’ fees and costs. The LWDA will be paid \$104,805.15. See Settlement

1 Agreement, at ¶ 11.

2 4. In exchange for the above settlement consideration, Defendant shall be entitled to
3 the following release from each and every Aggrieved Employee, including Plaintiff¹:

4 Upon the Effective Date, Plaintiff, on behalf of herself, the State of
5 California, and all Aggrieved Employees, release the Released
6 Parties (Defendant d/b/a “Jack Parker Corporation,” including its
7 operating entity—Parker Palm Springs II and their respective current
8 and former members, directors, officers, managers, employees,
9 principals, members, agents, insurers, reinsurers, shareholders,
10 attorneys, representatives, and each of their respective executors,
11 predecessors, successors, assigns, and legal representatives) from the
12 Released Claims (all claims under the PAGA, including costs and
13 attorneys’ fees related thereto, predicated on claims alleged or which
14 could have been alleged based on the facts alleged or which could
15 have been alleged based on the facts as alleged in the operative
16 Complaint in the Action and/or the LWDA Letter, including but not
17 limited to alleged failure to provide rest breaks, failure to provide
18 complete and accurate wage statements, and failure to timely pay
19 wages upon termination, that accrued from March 23, 2019, through
20 the date of court approval of this Settlement). This release shall be
21 effective for the period from March 23, 2019 through the date the
22 Court enters an order approving the Settlement Agreement.
23 Aggrieved Employees may discover facts in addition to those they
24 now know or believe to be true with respect to the subject matter of
25 the Released Claims, but upon the Effective Date, Aggrieved
26 Employees shall be deemed to have, and by operation of the
27 Settlement Approval order shall have, fully, finally, and forever
28 settled and released any and all of the Released Claims, without
regard to the subsequent discovery or existence of such different or
additional facts. Aggrieved Employees agree not to sue or otherwise
make a claim against any of the Released Parties that seeks recovery
for any of the Released Claims. It is the intent of the Parties that the
Settlement Approval order entered by the Court shall have full *res*
judicata effect and be final and binding upon Aggrieved Employees
regarding the Released Claims.

See Settlement Agreement at ¶ B(3).

22 5. The Settlement Administrator will be paid \$7,500 from the Total Monetary
23 Settlement Amount. See Settlement Agreement, at ¶ 15. ILYM Group, Inc., a reputable settlement
24 administration company, has agreed to administer the settlement within this amount.

25
26 ¹ This comports with settled California Supreme Court authority. See *Arias v. Superior Court*
27 (2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties,
28 nonparty employees as well as the government are bound by the judgment in an action brought
under the act . . .”).

6. As detailed herein, Plaintiff's Counsel seek an award of attorneys' fees and litigation costs of a combined \$90,259.80, and Plaintiff seeks a Service Award of \$7,500. *See* Settlement Agreement, at ¶ 15.

7. Any checks returned as non-deliverable on or before the Void Date will be sent promptly via regular First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Any check re-mailings will not extend the 180-day period to cash a check. Any checks issued to Aggrieved Employees shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after issuance, i.e., the Void Date. The Parties agree that, within fourteen (14) calendar days after the Void Date, any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Individual Settlement Payment checks prior to the Void Date shall be paid by the Settlement Administrator to the LWDA. *See* Settlement Agreement, at ¶ 22.

III. LEGAL ARGUMENT

A. Standards for Approval of A PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." *See* Labor Code § 2699(1)(2).

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

1 or “judged against a hypothetical or speculative measure of what might have been achieved by the
2 negotiators.” *See id.*

3 Although the operative PAGA statute does not set forth the criteria on which a PAGA
4 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for
5 review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), C.C.P. § 382 and Rule
6 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims
7 encompassed within class action settlements using Rule 23 criteria.² However, it is important to
8 underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class
9 representative basis . . . is not considered a class action but a law enforcement action, and therefore
10 does not have to meet the requirements of Rule 23.” *See Casida v. Sears Holdings Corp.*, 2012
11 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011
12 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist.
13 LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court’s review of a PAGA settlement
14 necessarily implicates the following unique features that render the approval process completely
15 distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Rule 3.769,
16 Cal. Rules of Court.

17 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
18 concerned with the amount which “Aggrieved Employees” are to receive, but rather, must focus on
19 the total settlement amount in achieving PAGA’s objective.

20 While “[a PAGA] action is . . . designed to protect the public and penalize the employer for
21 past illegal conduct” [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take

22 ² As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 “[involves] a
23 balancing of several factors which may include, among others, some or all of the following: [1] the
24 strength of Plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
25 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered
26 in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the
27 experience and views of counsel; [7] the presence of a governmental participant; and [8] the
28 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 into account the fact that settlement of a PAGA claim – like any settlement – involves a
2 “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court
3 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for
4 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties
5 for the government that otherwise may not have been assessed and collected by overburdened state
6 enforcement agencies.” *See Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 12.

7 **B. The Settlement Meets All the Criteria For Approval**

8 Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA
9 considerations detailed above – the proposed Settlement embodies all of the key features of a
10 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for
11 approval.

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

13 In conducting a review of a settlement, it is generally recognized that an “agreement . . .
14 reached through arms-length negotiation between experienced parties . . . is entitled to a
15 presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
16 44 (C.D. Cal. Apr. 12, 2010).

17 A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-
18 length negotiations [Gaines Decl. at ¶ 22], (2) that was negotiated by Counsel with significant
19 experience in similar wage and hour litigation [Gaines Decl. at ¶¶ 2-7; and **Exhibit A** to Gaines
20 Decl.], (3) which occurred after Counsel had conducted sufficient investigation to evaluate the
21 strength and potential value of the PAGA claims, as well as evaluating the risks of litigating this
22 claim through trial. Gaines Decl. at ¶ 23. Based thereon, the court should give considerable weight
23 to the competency and integrity of counsel in assuring itself that the Settlement Agreement
24 represents an arm’s-length transaction entered without self-dealing or other potential misconduct.
25 Gaines Decl. at ¶¶ 24-25.

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

28 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court

1 finding that the Settlement is fair, adequate, and reasonable, as Defendant maintained numerous
2 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
3 potential to completely eliminate any recovery.

4 This case addresses violations of important employee protection embodied in the California
5 Labor Code – namely, Defendant’s failure to provide rest periods, failure to provide complete and
6 accurate wage statements, and failure to timely pay wages upon termination to Plaintiff and
7 Aggrieved Employees. Defendant’s maximum theoretical exposure in this action stacking multiple
8 violations, is approximately \$1,798,200³.

9 Plaintiff contends that Defendant failed to offer or authorize uninterrupted ten-minute rest
10 periods to Plaintiff and Aggrieved Employees for every four hours worked or major fraction
11 thereof, but did not pay them premium wages in the amount of one hour’s pay for these denied rest
12 periods, in violation of Labor Code § 226.7. Plaintiff contends that due to her workload and lack
13 of additional support staff, she was unable to take all the rest periods to which she was entitled.
14 Plaintiff contends that due to the lack of additional support staff and her workload, a large portion
15 of rest breaks were on-duty, such that nearly every pay period – 8,913 in the aggregate during the
16 Settlement Period – would yield a \$100 PAGA civil penalty for this violation. As a result, the
17 maximum value of this claim is \$891,300 (8,913 pay periods times \$100 per pay period). Due to
18 the difficulties expected in prevailing on the merits on this claim, however Plaintiff was required
19 to discount the value of this claim for purposes of settlement at this juncture. Gaines Decl. at ¶ 28.

20 Plaintiff also seeks PAGA penalties for defective wage statements and waiting time.
21 Plaintiff, however, faced the risk that because these are partially derivative claims (e.g., Plaintiff
22 must prevail on their underlying rest period claim to prevail on these penalty claims), she would
23 not recover on these claims at all. Some case law has suggested that wage statement penalties and
24 waiting time penalties do not stem from rest period claims, as Plaintiff alleges herein. *See Ling v.*

25 _____
26 ³ This amount is based on the following violations for the relevant time period of March 23, 2019
27 to the present: \$100 x 8,913 pay periods (\$891,300) for violation of Labor Code § 226.7 (rest
28 breaks) + \$100 x 8,913 pay periods (\$891,300) for violation of Labor Code § 226(a) + \$100 x 156
separated employees (\$15,600) for violation of Labor Code §§ 201-202.

1 *P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242, review denied (July 13, 2016); *See*
2 *also, Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App. 5th 444 (currently under
3 review by the California Supreme Court to determine whether waiting time penalties for meal and
4 rest period
5 violations are recoverable). The value of these claims were substantially discounted for settlement
6 purposes in light of the fact that their recovery is highly questionable. Gaines Decl. at ¶ 29.

7 Plaintiff alleges that Defendant also separately violated Labor Code § 226(a)(9). This
8 portion of the claim was a direct violation of Labor Code §226(a) and was *not* derivative of any
9 underlying claim. The maximum value of the late pay claim is \$15,600 (156 separated employees
10 times \$100 each, one violation per final pay period) and the maximum value of the non-derivative
11 wage statement claim is \$626,900 (6,269 pay periods x \$100 per pay period). Defendant contends
12 that 6,269 pay periods (70% of the 8,913 pay periods worked during the PAGA Period) exhibit one
13 or more of these violations. Of course, these penalties are substantial for technical and derivative
14 violations and were subject to multiple defenses, including good faith and lack of willfulness. Due
15 to the difficulties expected in prevailing on the merits on these claims, Plaintiff discounted them
16 for purposes of settlement at this juncture. Gaines Decl. at ¶ 30.

17 Defendant contends it acted within the requirements of California law at all times as to all
18 Aggrieved Employees. Moreover, it maintained that even if the Court did award penalties, the
19 Court could and would *substantially* reduce the penalties awarded based on the discretionary factors
20 contained in Labor Code § 2699(e)(2) (“In action by an aggrieved employee . . . , a court may award
21 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
22 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
23 arbitrary and oppressive, or confiscatory.”). Defendant also argued that it was severely impacted
24 by the pandemic which caused it to shutter its business for several months. Gaines Decl. at ¶ 31.

25 Based on these disputes, which had the potential to completely eliminate Plaintiff’s
26 recovery, the range of realistic “litigation outcomes” on the Plaintiff’s PAGA claim was defined
27 by a “maximum possible liability” amount of approximately \$1,798,200, and a net-zero recovery
28 based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the

1 Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of
2 resolution by way of the compromise set forth in the Settlement. Gaines Decl. at ¶ 32.

3 This result is exceptional, as settlement of PAGA claims impacting thousands of individuals
4 [versus the approximately 322 Aggrieved Employees in this case] have been approved as
5 reasonable for amounts far less than the payment in this case. The Settlement not only achieves a
6 recovery that exceeds typical PAGA awards routinely approved by the courts, it recovers significant
7 monies for Aggrieved Employees which they otherwise would not receive. As such, this factor
8 balances strongly in favor of approval of the Settlement. Gaines Decl. at ¶ 33.

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

10 Approval of the proposed Settlement Agreement is also appropriate in light of the risk,
11 expense, and complexity of further litigation. As discussed above, the proposed Settlement
12 Agreement takes into consideration the specific factual and legal hurdles faced by Plaintiff in
13 establishing Defendant's penalty-liability in this case, which again, may have resulted in a net-zero
14 recovery. These risks – when balanced with the fact that the settlement achieved a significant
15 recovery (as demonstrated below), and that further litigation posed a risk of diminishing such
16 recovery by increasing litigation expenses – weigh strongly in favor of settlement approval. Gaines
17 Decl. at ¶¶ 34-36.

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

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

23 The proposed settlement is not to be judged against a hypothetical or
24 speculative measure of what might have been achieved by the
25 negotiators.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at
26 625 (emphasis in original). Thus, “the very essence of a settlement is
27 compromise, ‘a yielding of absolutes and an abandoning of highest
28 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

1 disapproved.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 &
2 n.2 (2nd Cir. 1974).

3 *See Linney*, 151 F.3d at 1242.

4 Here, after all deductions are made for administration, Plaintiff’s Service Award payment,
5 attorneys’ fees and costs, \$139,740.20 will be paid out of which, \$104,805.15 (i.e. 75%) will go to
6 the LWDA, and \$34,935.05 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor
7 Code § 2699(i) (“civil penalties recovered by Aggrieved Employees shall be distributed as follows:
8 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the Aggrieved
9 Employees.”).

10 This result is exceptional, as settlements of PAGA claims impacting thousands of
11 individuals have been approved as reasonable for amounts far less than the payment to fewer than
12 300 employees in this case. *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-
13 42 (E.D. Cal. Nov. 27, 2012) (“Defendant has agreed to pay \$10,000 as civil penalties pursuant to
14 the PAGA Of the \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the
15 remainder (\$2,500) will benefit the class The Court finds that the PAGA payment is set at a
16 reasonable amount, and it shall be approved.”); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.
17 LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012) (“GTI agrees to allocate \$10,000 to Plaintiff’s
18 PAGA claims, and will pay \$7,500 to the LWDA, and \$2,500 to participating Class Members on a
19 pro-rata basis. This comports with settlement approval of PAGA awards in other cases. . . .
20 Therefore, the Court will approve the allocation of the Settlement to Plaintiff’s PAGA claim.”);
21 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012)
22 (“Pursuant to the Settlement Agreement, the parties have agreed to pay \$7,500 to the California
23 Labor and Workforce Development Agency The Court finds that the PAGA Payment is set at
24 a reasonable amount, and recommends that it be approved.”); *Gong-Chun v. Aetna Inc.*, 2012 U.S.
25 Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) (“Pursuant to the Settlement Agreement,
26 Defendant has agreed to pay \$15,000 to the California Labor and Workforce Development Agency
27 The Court finds that the PAGA payment is set at a reasonable amount, and it shall be
28

1 approved.”).⁴

2 Thus, notwithstanding the existence of issues having the potential to completely eliminate
3 recovery on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds
4 typical PAGA awards routinely approved by the courts, but it also recovers significant monies for
5 Aggrieved Employees which they otherwise would not receive. As such, this factor balances
6 strongly in favor of approval of the Settlement.

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

8 As discussed above, the California Supreme Court has concluded that in the context of
9 PAGA “the nonparty employees, because they were not given notice of the action or afforded any
10 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
11 penalties.” *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for
12 the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code
13 §§ 201, 202, 226, 226.3, and 558. *See Settlement Agreement*, at ¶ 13.

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

15 **6. The Experience and Views of Plaintiff’s Counsel Favor Approval of the**
16 **Settlement**

17 Plaintiff’s Counsel have a significant degree of experience in complex wage and hour
18 litigation. *Gaines Decl.* at ¶¶ 2-7; **Exhibit A** to *Gaines Decl.* In the view of Plaintiff’s Counsel,
19 the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the
20 circumstances, as it reflects a reasoned compromise which takes into consideration the risks
21 inherent in this case which had the potential to completely eliminate recovery. This factor balances
22 in favor of approval of the Settlement.

23
24
25 ⁴ Significantly, each of the above-cited actions involved substantially more “Aggrieved
26 Employees” than the approximately 322 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
2 **7. The Extent of Discovery Completed And The Stage Of The Proceedings**
3 **Favor Approval of the Settlement**

4 In evaluating this element, the Court should be mindful that ““formal discovery is not a
5 necessary ticket to the bargaining table”” [Linney, 151 F.3d at 1239], as the relevant consideration
6 is “whether ‘the parties have sufficient information to make an informed decision about
7 settlement.’” See *Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at
8 26 (C.D. Cal. Nov. 9, 2011).

9 Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s
10 Counsel to evaluate the strength and value of the claim for purposes of settlement. Gaines Decl. at
11 ¶¶ 16. As discussed above, Plaintiff’s Counsel’s investigation was sufficient to, among other
12 things, tabulate with precision the total number of alleged Labor Code violations at issue during
13 the Settlement Period and identify the total number of individuals falling within the definition of
14 “Aggrieved Employee” for the Settlement Period.

15 Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such
16 investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate
17 the strength of this claim for purposes of settlement. Gaines Decl. at ¶¶ 2-7.

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

20 In addition to the factors presented above, the proposed Settlement does not possess any
21 obvious deficiencies.

22 With regard to settlement administration, ILYM Group, Inc. was selected because they
23 returned a competitive bid of \$7,500. This falls within the allocated amount in the Settlement
24 Agreement.

25 Moreover, Plaintiff has complied with PAGA’s notice requirements [see *Labor Code* §
26 2699(1)(2)]; Plaintiff transmitted the Settlement Agreement to the LWDA by online submission
27 concurrently with its submission to the Court on July 13, 2021. Gaines Decl., ¶ 15.

28 In sum, under the applicable standards for approval of PAGA settlements in California, the
 settlement in this case meets the standards for approval.

1
2 **IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR**
3 **REASONABLE FEES AND COSTS**

4 Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees of
5 \$81,666.67 and reimbursement of litigation costs in the amount of \$8,593.13 which is less than the
6 allowable amount of \$9,000. See Settlement Agreement, at ¶ 2b. Plaintiff's Counsel's entitlement
7 to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the
8 amount of fees requested falls well within the range of reasonableness under applicable standards,
9 as the amount requested constitutes a "percentage of the fund" deemed reasonable in similar wage
10 and hour settlements of this size and approved by California courts, which is not only warranted
11 based on the contingency risk Plaintiff's Counsel has agreed to incur for the benefit of the State of
12 California and Aggrieved Employees, but also based on the significant results achieved, as the
13 Settlement obtains a recovery substantially above the range approved as reasonable by California
14 state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the Court enter
15 an order approving the fee and cost amounts requested.

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

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

22 Courts have long recognized the "common fund" or "common benefit" doctrine, under
23 which attorneys who create a common fund or benefit for a group of persons may be awarded their
24 fees and costs to be paid out of the fund. *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25,
25 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
26 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
27 15 Cal.3d 162, 167; see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric*
28 *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

1 common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all
2 results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded
3 attorneys' fees out of the fund." *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d
4 1; *see also Boeing*, *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
5 of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
6 a whole."); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
7 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
8 Group) at § 17:172.3 explains the common fund doctrine as follows:

9 Where the lawsuit results in the recovery of a fund or property
10 benefiting others as well as Plaintiffs (e.g., a class action), the court
11 has inherent equitable power to order Plaintiffs' attorney fees paid
12 out of the common fund or property [citations]. Such fee spreading
 assures that all of those benefited by the litigation pay their fair share
 of obtaining the recovery.

13 The percentage-of-the-fund approach appears to be the preferred method of awarding fees
14 in traditional common fund cases, such as this case. Where the settlement amount is a "certain or
15 easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano*
16 *III*, 20 Cal. 3d at 35.

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

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

1 the California Supreme Court recognized that the common benefit doctrine has been applied
2 “consistently in California when an action brought by one party creates a fund in which other
3 persons are entitled to share.”

4 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
5 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
6 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable
7 powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and
8 expenses properly awarded from common benefit composed of illegally imposed sales and use tax);
9 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit
10 created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974)
11 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners
12 of residential property in an inverse condemnation action).

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

19 Thus, as Plaintiff’s Counsel have expended a significant amount of time and money to
20 secure a \$245,000 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S.
21 Dist. LEXIS 80776, at 43 (“A common fund results when ‘the activities of the party awarded fees
22 have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of
23 which sum or ‘fund’ the fees are to be paid.’”)], and in doing so, have exclusively borne the risk of
24 loss for such expenditures of time and expenses (as the LWDA elected not to take the case after
25 receiving the PAGA Notice), Plaintiff’s Counsel are entitled to claim reasonable fees from that
26 fund under applicable precedent.⁵

27 _____
28 ⁵ Plaintiff’s Counsel are also entitled to recover attorney’s fees and costs as a matter of right under

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

2 In addition to the foregoing, Plaintiff's Counsel's request for attorneys' fees in the amount
3 of \$81,666.67, or one-third of the \$245,000 Total Monetary 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 is at the lower end of that range.

11 Moreover, taking into account the contingency risk Plaintiff's 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 – Plaintiff's
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 Plaintiff's Counsel – one-third of the Total Monetary
18 Settlement Amount – is reasonable based on standards applicable to the "percentage of the fund"
19 method. "When assessing whether the percentage requested is reasonable, courts look to factors
20 such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of
21 work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in
22 similar cases." *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

23 _____
24 the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be
25 entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the
26 instant PAGA action was by definition "for the public benefit" and secured monetary awards for
27 approximately 65 Aggrieved Employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.*
28 (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 First, the results achieved by Plaintiff's Counsel are significant, as Defendant has agreed to
2 pay \$245,000 under the Settlement. This is a significant recovery given the risk of success in
3 obtaining any recoverable penalties. Gaines Decl. at ¶¶ 37-41.

4 Second, such results were achieved in the face of significant risks. As explained above,
5 Defendant maintained defenses to Plaintiff's PAGA claim that very well could have resulted in a
6 net-zero recovery at trial.

7 Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the
8 instant PAGA claim for the benefit of the State of California on a contingency basis. Gaines Decl.
9 at ¶ 37. This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in
10 securing the very substantial financial benefit the State of California stands to receive, but
11 constitutes a "loan" on Plaintiff's Counsel's services – both of which are factors warranting fee
12 enhancement under applicable California Supreme Court authority:

13 One of the most common fee enhancers . . . is for contingency risk.
14 We reaffirmed the propriety of a contingency risk enhancement in
15 Ketchum: "The economic rationale for fee enhancement in
16 contingency cases has been explained as follows: 'A contingent fee
17 must be higher than a fee for the same legal services paid as they are
18 performed. The contingent fee compensates the lawyer not only for
19 the legal services he renders but for the loan of those services. The
20 implicit interest rate on such a loan is higher because the risk of
21 default (the loss of the case, which cancels the debt of the client to
22 the lawyer) is much higher than that of conventional loans.' (Posner,
23 Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer
24 who both bears the risk of not being paid and provides legal services
25 is not receiving the fair market value of his work if he is paid only
26 for the second of these functions. If he is paid no more, competent
27 counsel will be reluctant to accept fee award cases.' "

28 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579-580.

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

1 fund).

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

6 **D. While the Requested Award of Attorneys' Fees is Reasonable as a**
7 **Percentage of the Common Fund, It is Further Confirmed by a**
8 **Lodestar Cross-Check**

9 The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1
10 Cal.5th 480, 506, that "[t]he percentage of fund method survives in California class action cases."
11 Specifically, the *Laffitte* Court held:

12 The recognized advantages of the percentage method—including relative
13 ease of calculation, alignment of incentives between counsel and the class, a
14 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.

15 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("when
16 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
17 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
18 plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh* (1982) 32 Cal.3d
19 621, 627 (in awarding a fee from the common fund obtained for the benefit of all parties, the trial
20 court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v.*
21 *Prudential-Bache Properties, Inc.* 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
22 method for calculating attorneys' fees more accurately reflects the results achieved for the putative
23 class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs'
24 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
25 litigation."); *In re Rite Aid Corp. Securities Litigation* 396 F.3d 294, 300 (3d Cir. 2005) ("The
26 percentage-of-recovery method is generally favored in common fund cases because it allows courts
27 to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for
28 failure.'").

1 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with
2 tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar
3 (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed
4 to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-
5 06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold
6 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the
7 court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to
8 evaluate the reasonableness of a requested percentage fee.”)

9 Here, Plaintiff’s Counsel’s fee request of \$81,666.67 (one-third of the Total Monetary
10 Settlement Amount) is fair and reasonable based on a percentage of the recovery, and as well as
11 when confirmed with a lodestar cross-check. First, “regardless whether the percentage method or
12 the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
13 *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class
14 Counsel’s experience in similar wage and hour class action matters. *Gaines Decl.* at ¶ 42. Thus,
15 the percentage sought by Plaintiff’s Counsel here is reasonable.

16 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
17 multiplying the number of hours reasonably expended by each attorney or legal staff member by
18 their reasonable hourly rates. *See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 48 The court then
19 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
20 and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
21 *Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank*, (2001) 92
22 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an
23 exercise of judicial discretion to increase or decrease a lodestar calculation”).

24 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
25 *Chavez, supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of*
26 *Oakland v. Oakland Raiders*, (1988) 203 Cal.App.3d 78 (approving multiplier of ~2.34); *Coalition*
27 *for L. County Planning etc. Interest v. Bd. of Supervisors*, (1977) 76 Cal.App.3d 241, 251 (approving
28 multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to

1 the class “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar
2 in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
3 within the range of fees freely negotiated in the legal marketplace in comparable litigation.”
4 *Consumer Privacy Cases*, (2009) 175 Cal.App.4th 545, 557. In doing so, “the court determines,
5 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill
6 justifying augmentation of the unadorned lodestar in order to approximate the fair market for such
7 services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

8 In this case, Plaintiff’s Counsel is submitting an attorney fee request equaling \$81,666.67
9 Based on a projected final lodestar of \$70,960, this yields a multiplier of 1.15 over the \$81,666.67
10 fee request. Gaines Decl. at ¶ 42. The billing rates used to compute the lodestar are reasonable in
11 view of the evidence submitted herewith. Gaines Decl. at ¶¶ 43-48; **Exhibit E** to Gaines Decl.

12 Based thereon, and for the reasons discussed above (the significant risk in continuing to
13 litigate this matter and in seeking to obtain penalties based on the claims asserted; the risks and
14 burden involved in representation on a contingency basis; the knowledge and experience of
15 Plaintiff’s Counsel; and the value obtained by Plaintiff’s Counsel for the Aggrieved Employees), it
16 is fair and reasonable to account for these risks and compensate Plaintiff’s Counsel with a fee award
17 of one-third of the Total Monetary Settlement Amount.

18 **E. Plaintiff’s Counsel’s Request for Costs is Reasonable**

19 In the course of this litigation, Plaintiff’s Counsel will incur out-of-pocket costs that total
20 \$8,593.13—less than the \$9,000 permitted pursuant to the Settlement Agreement. Gaines Decl. at ¶
21 49; **Exhibit F** to Gaines Decl.

22 As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included
23 filing fees, mediation fees, photocopy charges, service of process fees, expert analysis fees, and
24 mailing charges. *Id.* Such costs are appropriate for cost reimbursement in these types of cases. *See*
25 *e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*,
26 *Attorney Fee Awards*, § 2.19 (1987)); *see also, In re GNC Shareholder Litigation* (W.D. Pa. 1987)
27 668 F. Supp. 450, 452.

28 The costs incurred by Plaintiff’s Counsel in this litigation benefited Plaintiff, Aggrieved

1 Employees, and the State of California. In light of the litigation costs that Plaintiff's Counsel was
2 required to incur to prosecute this action, Plaintiff's Counsel's cost request is reasonable and should
3 be granted.

4 **V. THE SERVICE/GENERAL RELEASE PAYMENT SOUGHT BY PLAINTIFF**
5 **IS REASONABLE**

6 The Parties have agreed that Plaintiff will be paid a general release payment ("Plaintiff's
7 Service Award) in the amount of \$7,500. This payment is intended to both recognize the time and
8 effort that Plaintiff spent on behalf of other Aggrieved Employees and the State and to compensate
9 her for a full general release of all claims.⁶ See Declaration of Cristina Dennis ("Dennis Dec.")
10 submitted herewith.

11 Case law supports the award of incentive payments in private attorney general actions. The
12 Ninth Circuit has recognized that a named plaintiff's "willingness to act as a private attorney
13 general" may justify the award of an incentive payment. *Rodriguez v. West Publishing Corp.*, 563
14 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub LLC*, no. 2:12-CV-02716-
15 TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern District of
16 California approved a similar PAGA-only settlement and awarded a service payment to the
17 representative plaintiff in recognition of his efforts.

18 The traditional bases for awarding incentive awards in class settlements support the award
19 of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009)
20 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive
21 awards and held that "the rationale for making enhancement or incentive awards to named Plaintiff
22 is that he or she should be compensated for the expense or risk he has incurred in conferring a
23 benefit" on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a
24 traditional class action.

25 Without Plaintiff's efforts, there would be no recovery at all. The Service Payment to
26 Plaintiff is appropriate to compensate her for the risk and expense she incurred in conferring a

27 _____
28 ⁶ Plaintiff settled her claims for wrongful termination with Defendant in a separate action,
represented by separate counsel.

1 benefit on other of Defendant's employees and the State of California. *See* Settlement Agreement,
2 at ¶ 15.

3 As a result of Plaintiff's efforts, Aggrieved Employees will receive monetary settlement
4 payments, and the State of California will receive \$105,259.80 to be put toward education about
5 and enforcement of California's labor laws.

6 In this case, Plaintiff performed the following tasks, among others: (1) assisted Counsel in
7 investigating and substantiating the claims alleged in this action, including multiple interviews with
8 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
9 complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the
10 settlement of this litigation. *See generally*, Dennis Declaration. Moreover, as with any plaintiff
11 who files a civil action, the Plaintiff here undertook the financial risk that, in the event of a judgment
12 in favor of Defendant in this action, she could have been personally responsible for any attorneys'
13 fees and costs awarded in its favor.

14 The award of such a payment to Plaintiff is especially warranted in a case like this one. It
15 is necessary to ensure that employees, like Plaintiff, continue to bring claims like those brought
16 here to enforce the rights of employees. Individuals like Plaintiff (and most Aggrieved Employees)
17 would have little, if any, recourse without the representative action device. Most Aggrieved
18 Employees— like Plaintiff — would be fearful of retaliation in response to filing any lawsuit, much
19 less a representative action suit. Plaintiff must be commended for pursuing her claims; modest
20 payments like those sought here are an appropriate means of doing so.

21 VI. CONCLUSION

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

- 26 1. Grant approval of the Settlement Agreement, pursuant to California Labor Code §
27 2699, subpart I;
- 28 2. Appoint ILYM Group, Inc. as the Settlement Administrator and approve its

1 administration fees of \$7,500 for payment out of the Total Monetary Settlement Amount;

2 3. Approve the award of attorneys' fees and costs to Plaintiff's Counsel of \$90,259.80,
3 payment of which shall come from the Total Monetary Settlement Amount;

4 4. Approve a general release payment ("Plaintiff's Service Award") to Plaintiff
5 Cristina Dennis the amount of \$7,500 from the Total Monetary Settlement Amount;

6 5. Direct disbursement of the remaining Total Monetary Settlement Amount to the
7 LWDA and all Aggrieved Employees as provided for in the Settlement Agreement; and

8 6. Enter a Final Order and Judgment in accordance with the Settlement Agreement in
9 the form submitted concurrently herewith.

10 Date: July 13, 2021

Respectfully submitted,

11 GAINES & GAINES, APLC

12
13 By: 

14 DANIEL F. GAINES
15 Attorneys for Plaintiff
16 CRISTINA DENNIS
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