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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE –CIVIL COMPLEX CENTER

MARIA VELEZ, as an individual and on
behalf of other similarly situated employees,

Plaintiff,

vs.

LEGACY FARMS, LLC., a California
corporation, LEGACY FARMS OF
CALIFORNIA, LLC, a California corporation,
LEGACY FARMS EMPLOYMENT
SERVICES COMPANY, INC., a California
corporation, and PRIORITY WORKFORCE,
INC, a California corporation and DOES 1-50,
inclusive,

Defendants.

Case No.: 30-2019-01120177-CU-OE-CXC

Assigned for all Purposes to Honorable: Judge
William Claster
Dept. CX 104

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER APPROVING
SETTLEMENT UNDER CALIFORNIA
LABOR CODE SECTION 2699 ET SEQ.**

Hearing Date: February 4, 2022

Hearing Time: 9:00 a.m.

Department: CX104

Case filed: December 23, 2019

Trial date: TBD

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1 **I. INTRODUCTION**

2 Plaintiff Maria Velez (“Plaintiff”) seeks an order from the Court approving the PAGA
3 Settlement between Plaintiff, on the one hand, and defendants Legacy Farms, LLC, a Delaware
4 LLC, doing business in California as Legacy Farms of California, LLC; Cal Fresco/Legacy
5 Farms Employment Services Company, Inc. (collectively, “Legacy Farms”), and Priority
6 Workforce, Inc., (collectively with Legacy Farms, “Defendants”). Plaintiff brought this action
7 for alleged violations of the California Labor Code in a representative capacity under the Private
8 Attorney General Act (“PAGA”).

9 At the mediation, the parties resolved all claims alleged in this action. Plaintiff and
10 Defendants entered into an agreement, settling Plaintiff’s claims. Plaintiff and Defendants now
11 seek an Order from this Court approving the PAGA Settlement, as is required by California
12 Labor Code §2699(1)(2). (Declaration of Armond M. Jackson (“Jackson Decl.” ¶ 1, Ex. A,
13 Settlement Agreement.)

14 **II. BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY**

15
16 **a. BACKGROUND**

17 From approximately December 24, 2018 to April 15, 2019, Priority Workforce, Inc.
18 (“Priority”) placed Plaintiff at the Legacy Farms distribution center in Anaheim, California, as a
19 temporary food packer/sorter. From March 22, 2019, through December 31, 2020, Priority
20 placed 185 workers at that distribution center. Plaintiff alleges that Legacy Farms and Priority
21 jointly employed these workers. Defendants each deny that they employed these workers for
22 purposes of the claims asserted in this litigation.

23 Plaintiff filed this Complaint on December 23, 2019. Through this December 23, 2019
24 Complaint, Plaintiff alleged she and other similarly situated non-exempt employees in the state
25 of California were required to work through their meal and rest breaks and were not paid
26 associated penalties (Cal. Lab Code § 512, 226.7 & Wage Order 5-2001), were not provided with
27 accurate wage statements and were not paid associated penalties (Cal. Lab Code § 226(a)), not
28

1 paid premium wages upon termination and were not paid associated penalties (Cal. Lab. Code §
2 203) and were not paid all compensation owed, including minimum and overtime wages, nor
3 associated penalties (Cal. Lab. Code §§ 510 and 1194). Following a series of amendments to the
4 operative Complaint, Plaintiff dismissed her individual and class action allegations and claims
5 and amended this lawsuit to instead seek penalties on a representative basis under PAGA
6 pursuant to Cal. Lab. Code § 2699 et seq.

7 Defendants deny all of the claims and allegations in this litigation, including that they had
8 an employment relationship with Plaintiff or the workers she allegedly represents for purposes of
9 the claims alleged in this lawsuit or that they otherwise violated the law. This settlement reflects
10 a compromise reached to end litigation and does not constitute an admission of wrongdoing or
11 liability by any Defendants.

12 **b. PAGA NOTICE**

13 On March 13, 2020, Plaintiff served via certified mail, return receipt requested, the
14 LWDA, and the Defendants with notice of alleged wage and hour violations. (See Jackson Decl.
15 ¶ 15, Ex. E.) On April 30, 2020, Plaintiff served an amended notice to the LWDA and the
16 Defendants of the alleged wage and hour violations. (See Jackson Decl. ¶ 16, Ex. F.) The group
17 of allegedly aggrieved employees Plaintiff seeks to represent in this litigation are non-exempt
18 employees that Plaintiff alleges were jointly employed by Defendants between March 22, 2019,
19 and December 31, 2020.

20 **c. COMPLAINT AND AMENDED COMPLAINTS**

21 On December 23, 2019, Plaintiff filed a complaint for damages, titled *Maria Velez v.*
22 *Legacy Farms, LLC. et al.*, in Orange County Superior Court Case 30-2019-01120177-CU-OE-
23 CXC (“Lawsuit”) against Legacy Farms, LLC, a California LLC; Legacy Farms of California,
24 LLC, a California LLC; and Priority Workforce, Inc., a California corporation. In the original
25 complaint, Plaintiff alleged causes of action for failure to provide accurate wage statements,
26 failure to maintain records, claim for failure to pay for meal periods and rest periods, claim for
27 failure to pay for minimum wages and overtime wages, and claim for failure to pay upon
28

1 termination and unlawful business practices. Plaintiff alleged these claims individually and on
2 behalf of a putative class. (Dkt. No. 1.)

3 On May 26, 2020, Plaintiff filed her First Amended Complaint adding Legacy Farms
4 Employment Services Company, Inc. as a defendant to all causes of action and adding her claim
5 for PAGA penalties against all defendants. (Dkt. No. 13.) Pursuant to California Code of Civil
6 Procedure section 340 and Labor Code section 2699.3, Plaintiff's PAGA claim covers alleged
7 violations from March 22, 2019, forward for entities that received legally adequate notice.

8 Defendants answered the First Amended Complaint while conferring regarding an
9 arbitration agreement that Plaintiff signed with Priority Workforce. (See Dkt. Nos. 30, 33, 35.)
10 The parties eventually stipulated to Plaintiff amending her Complaint to dismiss the claims
11 subject to the arbitration agreement. (Dkt. No. 48.)

12 On October 23, 2020, Plaintiff filed her Second Amended Complaint that dismissed all
13 class and individual claims subject to the arbitration agreement. Plaintiff's sole cause of action is
14 under PAGA. (Dkt. No. 56.)

15 On February 9, 2021, Plaintiff filed her Third Amended Complaint that dismissed Legacy
16 Farms, LLC, a California LLC (a California corporation). (Dkt. No. 144.) In its place, Plaintiff
17 joined Legacy Farms, LLC, a Delaware LLC, to this lawsuit as a defendant. Defendants
18 subsequently answered the Third Amended Complaint.

19 **d. SUBSTANTIAL DISCOVERY AND CASE ANALYSIS BY PLAINTIFF**

20 PAGA attaches penalties of at least \$100 for each aggrieved employee per pay period in
21 which a Labor Code violation exists. To collect PAGA penalties, Plaintiff would have to prevail
22 on the merits of the underlying claims. Thus, these weaknesses would limit recovery under
23 PAGA. Moreover, the trial court has discretion in reducing civil penalties in an "amount based
24 on facts and circumstances of a particular case, to do otherwise, would result in an award that is
25 unjust, arbitrary or oppressive, or confiscatory." Cal. Lab. Code Sec. 2699(e)(2). (*Id.*) In light of
26 the preceding, and even factoring in the potential advantage for Plaintiff of not succeeding on her
27
28

1 PAGA claims, the value of these claims are predicated on the discretion of the Court and the
2 likelihood of prevailing at trial.

3 Extensive discovery was taken by Plaintiff, including written discovery and document
4 production, as well as informal discovery identifying the aggrieved employees at issue that
5 would be subjected to the various Labor Code violations. Additionally, during each discovery
6 phase, Plaintiff's counsel engaged in a detailed case analysis based on the information revealed.
7 (Jackson Decl. ¶¶ 3-10.) Calculations were performed, and analysis of the risks and rewards of
8 continued litigation. (*Id.*) It was estimated that there were approximately 185 aggrieved
9 employees and 2000 pay periods during the relevant period. (*Id.*) Plaintiff estimates that PAGA
10 penalties would amount to approximately \$924,112 for all violations. (*Id.*) After several rounds
11 of negotiations, including with the assistance of Hon. Carl West (ret.) of JAMS, a settlement of
12 \$250,000 was reached. (*Id.*) The parties executed a Memorandum of Understanding on August 6,
13 2021, and commemorated the final terms of their settlement in the long-form settlement
14 agreement included with this motion. This settlement results in approximately 27%
15 (250,000/924,112) of the maximum expected exposure against Defendants for civil penalties for
16 PAGA claims for the aggrieved employees.

17
18 **e. SUBMISSION OF PAGA SETTLEMENT AGREEMENT AND
MOTION TO LWDA**

19 On January 10, 2022, Plaintiff submitted the PAGA Settlement Agreement, together with
20 a copy of this motion and all concurrently filed associated documents to the Labor and
21 Workforce Development Agency ("LWDA"). (Jackson Decl. ¶ 2, Ex. B.)

22 **III. LEGAL STANDARD**

23 The California Legislature enacted the Private Attorney General Act ("PAGA") as a
24 "[r]espon[se] to a shortage of State funds and staffing to enforce State labor laws." *Caliber*
25 *Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 374 (2005). PAGA "allow[s]
26 aggrieved employees, defined as any person who was employed by the alleged violator and
27 against whom one or more of the alleged violations was committed, to bring a civil action to
28

1 collect civil penalties for [California] Labor Code violations.” *Id.* at 374 (internal quotation
2 marks omitted). An individual suing under PAGA “does so as [a] proxy or agent of the state’s
3 labor law enforcement agencies.” *Arias v. Superior Court* (2009), 46 Cal. 4th 969, 986. In other
4 words, “an aggrieved employees action under the PAGA functions as a substitute for an action
5 brought by the government itself.” *Iskanian v. CLS Transp. Los Angeles, LLC* (2014), 59 Cal. 4th
6 348, 381. Consequently, PAGA allows an employee to recover “civil penalties on behalf of the
7 state against his or her employer for [California] Labor Code violations.” *Id.* at 360 (emphasis
8 added); see also *Villacres v. ABM Indus. Inc.* (2010), 189 Cal. App. 4th 562, 579 (“PAGA is
9 limited to the recovery of civil penalties”).

10 When a plaintiff settles a PAGA claim, the court must review the settlement related to
11 claim and the payment of penalties. Cal. Labor Code § 2699.3(b)(4). “PAGA settlements are
12 subject to trial court review and approval, ensuring that any negotiated resolution is fair to those
13 affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 [citing Lab. Code, §
14 2699(1)(2)].) “A court has discretion to approve the settlement of PAGA claims if the settlement
15 would be ‘fair.’” (See *Nordstrom Commission Cases* (2010), 186 Cal. App. 4th 576, 581)

16 **IV. ARGUMENT**

17 **a. PAGA ALLEGATIONS**

18 **1. Labor Code Violations**

19 In this case, the core basis to support Plaintiff’s PAGA claims were based upon alleged
20 meal and rest break violations, alleged wage statement violations, alleged final pay violations,
21 and alleged minimum wage and overtime wage violations for working off-the-clock. (Jackson
22 Decl. 4-15.) After analyzing the discovery, it was confirmed that Priority placed approximately
23 185 allegedly aggrieved employees at Legacy Farm’s facility during the PAGA period. (*Id.*) It
24 was also determined there were approximately 2000 pay periods during the relevant period. (*Id.*)
25 The amount per pay period amounts to \$125 based upon the exposure (\$250000/2000 pay
26 periods).
27
28

1 2. Meal Break Violations

2 The payroll records determined that the maximum exposure amounted to \$152,000 based
3 upon a 76% violation rate during 2000 (2000 *.76%) pay periods during the relevant period.
4 (Jackson Decl. ¶ 4.) Alternatively, it was alleged that the handwashing activities caused short
5 meal breaks. Under this alternative analysis, a 100% violation rate would apply based upon 2000
6 pay periods amounted to \$200,000 in penalty exposure. (*Id.*) Defendants claim that Plaintiff and
7 other similarly situated employees were provided with reasonable opportunities to take their
8 meal breaks, and handwashing procedures did not interrupt or shorten meal breaks. Legacy
9 Farms produced discovery documents that it claims proved that it provided legally compliant
10 meal and rest breaks to individuals working at the distribution center, including those engaged
11 through outside staffing agencies like Priority. Given this disputed fact, a discount should be
12 applied.

13 3. Rest Break Violations

14 Similarly, Legacy Farms produced discovery documents that it claims proved that it
15 provided legally compliant meal and rest breaks to individuals working at the distribution center,
16 including those engaged through outside staffing agencies like Priority. However, a conservative
17 assumption while applying the same violation rate above for rest breaks would also amount to
18 \$152,000 based upon a 76% violation rate during 2000 (2000 *.76%) pay periods during the
19 relevant period. (Jackson Decl. ¶ 5.) Plaintiff alleged that the handwashing activities caused short
20 rest breaks. Under this alternative analysis, a 100% violation rate would apply based upon 2000
21 pay periods amounted to \$200,000 in penalty exposure. (*Id.*) Legacy Farms claims that Plaintiff
22 and other allegedly similarly situated workers were provided with reasonable opportunities to
23 take their rest breaks, and handwashing procedures did not interrupt or shorten rest breaks. Given
24 this disputed fact, a discount should be applied.

25 4. Overtime Wage Violations

26 Overtime wage violations were based upon the allegation that the aggrieved employees
27 were subjected to a policy of washing hands before beginning the shifts and before clocking in
28

1 from meal periods. (Jackson Decl. ¶ 6.) It was alleged that these activities would amount to
2 approximately 3 minutes per shift of off-the-clock work. (*Id.*) Assuming a 100% violation rate
3 based upon 2000 pay periods amounted to \$200,000 in penalty exposure. (*Id.*) Legacy Farms
4 produced in discovery documents which it claims proved that it required all individuals working
5 at the distribution center, including those individuals who were engaged through outside staffing
6 agencies like Priority, to record all hours worked and to be clocked in (or otherwise record)
7 before performing any such work, including handwashing. Legacy Farms claims that Plaintiff
8 and other similarly situated workers were not required to engage in handwashing procedures off-
9 the-clock. Given this disputed fact, a discount should be applied.

10 5. Minimum Wage Violations

11 Minimum wage violations were based on the allegation that the aggrieved employees
12 were subjected to a policy of washing hands before beginning the shifts and clocking in from a
13 meal period. (Jackson Decl. ¶ 7.) It was alleged that these activities would amount to
14 approximately 3 minutes per shift of off-the-clock work. (*Id.*) Again, assuming a 100% violation
15 rate based upon 2000 pay periods amounted to \$200,000 in penalty exposure. (*Id.*) Legacy Farms
16 produced in discovery documents which it claims proved that it required all individuals working
17 at the distribution center, including those individuals who were engaged through outside staffing
18 agencies like Priority, to record all hours worked and to be clocked in (or otherwise record)
19 before performing any such work, including handwashing. Again, Defendants dispute the off-
20 the-clock handwashing theory justifying a discount.

21 6. Wage Statements

22 This wage statement claim is based upon the Defendants failing to provide the name of
23 the “legal entity that secured the services of the employer” due to the allegation of Legacy
24 Farms, LLC being a farm labor contractor in violation of Labor Code section 226(a)(8). (Jackson
25 Decl. ¶ 8.) However, it was discovered that the Legacy Farms defendants were not farming labor
26 contractors and instead a packaging facility not located on a farm. (*Id.*) Therefore, the 226(a)(8)
27 provision was not applicable, resulting in the wage statement claim being discounted. (*Id.*) The
28

1 other 226(a) allegations were based on derivative claims. Given the uncertainty of the law
2 surrounding whether 226a claims can be based upon derivative wage violations, the exposure
3 under Labor Code 226(a) would amount to \$50,000, which is 25% of the maximum exposure
4 (2000 pay periods * \$100). (*Id.*)

5
6 7. 203 Penalty Violations

7 This penalty claim is based upon purported minimum wage or overtime violations.
8 (Jackson Decl. ¶ 9.) It was estimated that 20 employees who were terminated, laid off, or
9 resigned were subjected to Labor Code violations. Each employee would presumably be entitled
10 to \$3,705.60, equating to \$74,112 in penalties. (*Id.*) Defendants dispute that any wages remain
11 unpaid. Legacy Farms denies that it had control over the payment of wages given that Priority
12 was responsible for this aspect of employment for any aggrieved employees, including Plaintiff.
13 Moreover, Legacy Farms produced in discovery documents which it claims proved that it
14 required all individuals working at the distribution center, including those individuals who were
15 engaged through outside staffing agencies like Priority, to record all hours worked and to be
16 clocked in (or otherwise record) before performing any such work, including handwashing.
17 Given the premise underlying the 203 claims was based upon the theory regarding off-the-clock
18 handwashing procedures in dispute, a discount should be applied.

19 **b. SETTLEMENT ACHIEVES THE PURPOSE OF PAGA**

20 The purpose of PAGA is “to incentivize private parties to recover civil penalties for the
21 government that otherwise may not have been accessed and collected by overburdened state
22 enforcement agencies.” (See *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2,
23 2010) 2010 WL 1340777 at *4 (citing *Arias, supra*, 46 Cal.4th at 986.) Moreover, PAGA was
24 enacted “to achieve maximum compliance with state labor laws and “to ensure an effective
25 disincentive for employers to engage in unlawful and anticompetitive business practices.” 2003
26 Cal. Legis. Serv. H. 906 section 1(a).

27 Consistent with the purpose of PAGA, the following factors in determining whether to
28 approve the settlement should be applied;

- 1 (1) The extent to which the settlement achieves compliance with state labor laws;
2 (2) The extent to which the settlement deters violations of the state labor laws;
3 (3) Whether the settlement serves to enlist private citizens in public enforcement of
4 PAGA;
5 (4) Whether the settlement is otherwise “just” and “in the public interest.”

6 Because this proposed settlement reasonably and fairly advances each of the above
7 factors, the parties request approval.

8
9 1. Factors (1) and (2) Settlement Achieves Compliance with State Labor Laws and Deters Further Violations

10 As discussed above, several Labor Code violations were alleged, but the evidence
11 supporting these allegations is not definitive by any means. Defendants are paying attorneys, the
12 State, and aggrieved employees for these Labor Code violations. Moreover, this litigation
13 incentivized Defendants to ensure full compliance with the state Labor Code deterring further
14 similar violations, thereby achieving this purpose of PAGA. This litigation further incentivizes
15 Defendants to comply with handwashing procedures and premium wage payments.

16 2. Factor (3) This Settlement Serves to Enlist Private Citizens in Public Enforcement of PAGA

17 Plaintiff also believes the proposed settlement acts to encourage private enforcement of
18 PAGA. Through the settlement, Plaintiff’s counsel will receive attorneys’ fees and costs as
19 determined by the Court, and all aggrieved employees will receive a 25% share of the net
20 settlement amount, as well as notice of the claim.

21
22 3. Factor (4) This Settlement is Just and in the Public Interest

23 Lastly, the proposed settlement is just and in the public’s interest.

24 First, the settlement reasonably values the alleged Labor Code violations as to
25 Defendants. While Plaintiff believes the claims are meritorious, Defendants dispute any liability
26 concerning the alleged violations. Despite this dispute, the parties have agreed to a settlement
27 representing approximately 27% of the maximum expected liability exposure
28

1 (\$250,000/\$924,112). Here, Plaintiff's total evaluation for penalties under the California Private
2 Attorney General Act amounted to approximately \$924,112 of expected exposure without
3 discounts. After several rounds of negotiations, including with the assistance of Hon. Carl West
4 (ret.) of JAMS as a mediator, a settlement of \$250,000 was reached to resolve PAGA claims. If
5 the Court grants Plaintiff's motion for attorneys' fees and costs, the aggrieved employees will
6 share approximately \$34,668.75, which is a substantial sum given the limited release and extent
7 of Labor Code violations. Indeed, the relevant period for the claims in this action is limited
8 because Priority stopped staffing workers at the Legacy Farms distribution center in or around
9 December 2020. Thus, the potential penalties, in this case, are limited.

10 Second, the settlement seeks penalties only, and release is narrowly tethered to the
11 alleged Labor Code violations that serve to support Plaintiff's PAGA claim.

12 Third, even with deductions, the settlement shall provide a substantial sum to the State:
13 \$104,006.25. It also provides a reasonable sum to each employee (around \$187.39) on a pro-rata
14 basis. Given the purpose of PAGA is not to compensate employees who still retain any private
15 rights of action they may have had under the applicable Labor Code provisions, this sum
16 provided to the aggrieved employees is reasonable. Moreover, the settlement will also provide
17 notice that describes the litigation and settlement sum. Plaintiff contends this notice will educate
18 the aggrieved employees as to the requirement of the Labor Code, which is in the public interest
19 intended to achieve the purpose of PAGA. (See Labor Code section 2699(j) (stating that civil
20 penalties recovered under PAGA shall be distributed to the LWDA for [among other things'
21 "education of employers and employees about their legal rights and responsibilities under this
22 code."))

23 Lastly, a public policy strongly favors the settlement of litigation. (*Consumer Advocacy*
24 *Group, Inc. v. Kinetsu Enterprises of America*, (2006) 141 Cal.App.4th, 46, 63.) This settlement
25 is not unjust or ignores the public interest; thus, it should be approved.

26 **c. SETTLEMENT DISTRIBUTION**

27 The PAGA Settlement Agreement provides a gross settlement of all PAGA penalties
28

for \$250,000. (Jackson Decl. ¶ 1, Ex. A, p. 1, Section 1.) This settlement amount covers civil penalties (to be shared between the LWDA and aggrieved employees), as well as attorneys' fees, litigation costs, and settlement administration costs. (*Id.*)

Under the agreement, the settlement amount will be distributed as follows: 1) Thirty-Three and one-third percent, equaling \$83,325.00, will be apportioned to attorney's fees to Plaintiff's counsel to procure the PAGA penalties; 2) Litigation costs of \$8,969.87; 3) of the remaining \$138,675, Seventy-Five percent, equaling \$104,006 will be apportioned to the California Workforce Development Agency; and 5) the remaining Twenty-Five percent, equaling \$34,668.75, will be distributed to the PAGA group. (Jackson Decl. ¶ 1, Ex. A, p. 6, pgh. 25.) The amount to be distributed to the PAGA group will be paid on a pro-rata basis by multiplying the net settlement amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the Release period to (ii) the total number of pay periods worked by all Aggrieved Employees during the release period. (Jackson Decl. ¶ 1, Ex. A, p. 7, pgh. 26, Section d.)

d. ATTORNEY'S FEES AND COSTS

The Labor Code permits a Plaintiff to seek attorney's fees and costs for actions arising under PAGA. (Cal. Lab. Code §2699, subd. (g)(1))

1. Attorneys' Fees Are Justified

(i) Lodestar Analysis

"Courts recognize two methods of calculating attorney fees in a civil class action; the lodestar/multiplier method and the percentage of recovery method." (*Wershba v. Apple Computer, Inc.* 91 Cal. App. 4th 224, 254 (2001).) "[T]he lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." (*Id.*) "The lodestar multiplier can range from 2 to 4 or even higher." (*Id.* at 255.)

In calculating attorney's fees under the Labor Code, the court should follow the lodestar approach adopted by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal. 4th 1122,

1134. See also *Chavez v. City of Los Angeles* (2010) 47 Cal. 4th 970, 985. The “lodestar” method is clearly defined in recent case law. It involves a five-step process. *In Re: Vitamin Cases* (2003) 110 Cal. App. 4th 1041, 1052. To determine the “lodestar number” – steps one through three of the process – the court multiplies the number of hours reasonably worked by a reasonable hourly rate. (*Id.*) Step four requires the Court to determine what, if any, multiplier should be applied to the lodestar number. Step five determines the amount of the attorney fee award by using the multiplier to the lodestar number. (*Id.*)

For the Court’s ease of reference, the following chart summarizes the attorney’s fees
PAGA Counsel seeks:

Item Description	Amount
Reasonable attorney’s fees incurred in procuring the underlying award applying the Lodestar method for calculating attorney’s fees in Labor Code cases (\$640.00 *180.45 hours)	\$91,970.85 *no multiplier
TOTAL	\$83,325.00

2. The Number of Hours Expended by Plaintiff’s Counsel Was Reasonable

“The starting point of every fee award...must be a calculation of the attorney’s services in terms of the time he has expended on the case.” *Press v. Lucky Stores, Inc.* (1983) 34 Cal. 3d 311, 322. Reasonable hours include, in addition to time spent during litigation, time spent before the action is filed, including time reasonably spent interviewing the client, investigating the facts and the law, and preparing the initial pleadings, as well as time spent in exhausting administrative remedies. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

The evidence submitted by PAGA Counsel in support of this motion reflects that PAGA Counsel reasonably expended the following number of hours in the prosecution of this case. (Jackson Decl. ¶¶ 4-14, Exs. C, D) Jackson Law filed this class action claim in December 2019, approximately 24 months before this hearing. A reasonable amount of work was performed pre-

1 litigation, including conducting an extensive intake process. (Jackson Decl. ¶¶ 4-14, Exs. C, D)
2 Counsel conducted discovery regarding both the circumstances of the Plaintiff's employment,
3 hours worked during his employment, meal breaks, wage statements, and rest periods taken
4 during her employment and Defendants' policies in general regarding the employment of
5 individuals concerning payment of wages, working conditions, meal breaks and rest periods,
6 minimum wage and overtime violations. (Jackson Decl. ¶¶ 4-14, Exs. C, D)

7 The time expended during the discovery phase was also reasonably incurred. (*Id.*)
8 Plaintiff filed seven discovery motions and one motion to amend pleadings. (Jackson Decl. ¶ 3)
9 Thereafter, numerous hours were spent by counsel in performing damages analysis of over
10 aggrieved employees regarding their entitlement to wages for missed meal breaks, rest periods,
11 overtime, accurate wage statements, minimum wage claims, pay upon termination. (*Id.*)

12 The time expended to achieve approval is also reasonably incurred. (*Id.*) Counsel
13 conducted extensive legal research on the procedures and issues involved in achieving approval.
14 (*Id.*) Armond M. Jackson appeared for court hearings on several occasions, preparing and
15 arguing the motion and addressing any concerns of the Court. (*Id.*) These hours were reasonably
16 spent to achieve approval of this PAGA Settlement. (*Id.*)

17 As outlined in the declarations submitted herewith, the total number of hours spent on
18 this matter by PAGA Counsel is reasonable in light of the work required to achieve the result.
19 (*Id.*) Thus, the Court shall conclude that all of the time spent on this case was reasonable and
20 necessary to accomplish this result, and counsel is entitled to compensation for all the attorney
21 hours worked in this case. (*Id.*)

22
23 3. The Hourly Rate Charged for the Services of Plaintiff's Counsel is Reasonable.

24 When determining a reasonable hourly rate for the attorney's services, courts consider the
25 following factors: (i) the prevailing rate charged by attorneys of similar skill and experience for
26 comparable legal services in the community, (ii) the nature of the work performed, and (iii) the
27 attorney's customary billing rates. *Serrano v. Unruh* (1982) 32 Cal.3d 631, 643; *See also Bihun*
28 *v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997 *disapproved on other*

1 grounds *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664. The hourly rate is
2 determined at the time of the prevailing party's fee application rather than rates charged at the
3 time the litigation began. (*Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1406.)

4 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
5 each attorney working on this case are reasonable and customary for those rates charged in
6 Southern California by attorneys with similar experience. (Jackson Decl. ¶¶ 4-15, 16 Exs. C, D)
7 On this matter, Mr. Jackson's hourly rate was \$640, Andrea Fernandez-Jackson's hourly rate was
8 \$300, and the legal staff's hourly rate was \$125, consistent with the Laffey Matrix. (Jackson
9 Decl. ¶¶ 11-12) Mr. Jackson is a senior attorney who has been litigating for approximately ten
10 years. (*Id.*) Ms. Fernandez-Jackson is a senior attorney who has been litigating for seven years.
11 (*Id.*)

12 Mr. Jackson's hourly rate on this matter was \$640, consistent with the Laffey Matrix.
13 (Jackson Decl. ¶¶ 11-12) Mr. Jackson is a senior attorney who has been litigating for over ten
14 years. (*Id.*) He has handled over a hundred employment matters on behalf of the plaintiff in his
15 career. (*Id.*) Mr. Jackson is a former member of the California Employment Litigation
16 Association ("CELA"). (Jackson Decl. ¶¶ 11-12.) Mr. Jackson has argued before the Ninth
17 Circuit and is responsible for a published opinion. (Jackson Decl. ¶ 13.) Ms. Fernandez-Jackson
18 has also argued before the Ninth Circuit. (*Id.*) Based on his experience and based on his research
19 for purposes of keeping his law firm competitive and profitable, he has knowledge of the hourly
20 rates other plaintiff's attorneys with similar experience charge in employment cases. (*Id.*) Based
21 on this foundation, Mr. Jackson believes that his regular hourly rate of \$640 per hour for Mr.
22 Jackson and \$440 for Ms. Fernandez-Jackson is reasonable and similar to what attorneys with his
23 tenure, experience, and expertise are charging in the Orange County area. (*Id.*)

24 This evidence, therefore, supports the reasonableness of the fees charged in this case.

25 "Our Supreme Court has explained that the reasonable hourly rate used for the lodestar
26 calculation 'is that prevailing in the community *for similar work*.'" *Syers Properties III, Inc. v.*
27 *Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are determined by the
28 formula "' reasonable market value'" and reached by evaluating the "'comparable salaries earned

by private attorneys with similar experience and expertise in equivalent litigation” and the “hourly amount to which attorneys of like skill in the area would typically be entitled.” (*Serrano v. Unruh*, 32 Cal. 3d 621, 640, fn. 31 (1982).)

As explained in the declaration of Armond Jackson, the current prevailing billing or "market" rates for attorneys in Orange County with Mr. Jackson's experience exceed \$640 per hour. Given the skill and experience of the attorneys who represented the plaintiff, an hourly rate of \$640 for Armond M. Jackson is reasonable. (Jackson Decl. ¶¶ 4-15, 16 Exs. C, D)

4. Laffey Matrix Rates

The Laffey Matrix is one well-established objective source setting rates for attorneys based upon years of experience for attorneys practicing in the District of Columbia. See <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part* on other grounds. 746 F.2d 4 (D.C.Cir. 1984)). Thus, Armond M. Jackson's rate as a ten-year attorney is \$676.00.

The product of multiplying the number of hours expended by counsel on this case and each respective attorney's hourly rate yields the following sums:

Attorney	Laffey Matrix Hourly Rate	Hours Billed	Total Amount
Armond M. Jackson (Attorney)	\$676.00 (Laffey Rate) actual amount charged \$640 per hour	180.45	\$91,970.85 (amount requested \$83,325.00)

1 5. Attorney's Fees Requested

2 Plaintiff requests that 33.33% of the amount awarded under the PAGA be
3 apportioned to attorney's fees. (Jackson Decl. ¶ 1, Ex. A, p. 7, pgh 26, Section b) This amount is
4 to be distributed from the lump sum of \$250,000 that was distributed to the claim brought under
5 PAGA and amounts to a total of \$83,325.00. (*Id.*) A fee application of 33.33% was used in this
6 case to be consistent with standard practices for representative actions. (*Id.*)

7 The attorney time spent and the costs incurred, as to one, necessarily affected the other.
8 Plaintiff had to establish that she was an aggrieved employee to maintain standing under PAGA.
9 (Cal. Lab. Code § 2699, subd. (a)). As of the date of this filing, more than 180.45 hours of
10 attorney time, more than \$91,970.85 in legal fees has been spent pursuing this case. A 33.33%
11 allocation of the \$250,000 award to PAGA is \$83,325.00. (*Id.*) Based upon the standard
12 practices for representative actions and the amount of time that has been spent pursuing the
13 representative action, in this case, the attorney's fees allocated are reasonable. (Jackson Decl, ¶
14 15, Ex. D.)

15 6. Lodestar Multiplier

16 Calculating this number is straightforward. The lodestar number is \$91,970.85 for the
17 work reflected on the invoices submitted (i.e., hourly rates multiplied by hours worked).
18 (Jackson Decl. ¶ 15, Ex. D) When determining the "lodestar" number, the court may consider the
19 following factors: (i) the quality of the representation, (ii) the novelty and complexity of the
20 issues, (iii) the results obtained, and (iv) the contingent risk presented. (*Thayer, supra*, 92
21 Cal.App.4th at p. 833.)

22 California courts may also consider the contingency fee risk as a factor to enhance the
23 lodestar amount where deemed appropriate to attract attorneys to cases of significant public
24 interest and to compensate for the risk of loss and delay in payment inherent in contingency fee
25 cases. (*Horsford, supra*, 132 Cal.App.4th at p. 395.) Courts may also consider a lodestar
26 enhancement to reflect a law firm's role in the success of the litigation. (*Serrano, supra*, 20
27 Cal.3d at p. 49.) Finally, courts may enhance the lodestar amount for the long delay in payment
28

1 in employment cases that span years before the attorney can collect fees. (*Downey Cares v.*
2 *Downey Comm. Develop. Comm'n* (1987) 196 Cal.App.3d 983, 997.)

3 The California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th
4 553 dealt with a trial court judgment that included a 2.25 multiplier to the lodestar amount. The
5 trial court based the enhancement on “the contingency nature [of the litigation], the delay in
6 payment and the quality of the result.” *Graham, supra*, 34 Cal.4th at p. 578-579.

7 Several recent cases have upheld applying a multiplier of 2.0 to the lodestar analysis.
8 (See *Estrada v. FedEx Ground Package System* (2007) 154 Cal.App.4th 1, 17—multiplier based
9 on the risk inherent in a contingent fee, the financial burden associated with prosecuting a
10 contingency case, and protracted litigation involving the enforcement of a substantial right; See
11 also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133—applying a 2.0 multiplier.)

12 Finally, one court has upheld a multiplier of 1.65 (*Amaral v. Cintas Corp.* (2008) 163
13 Cal. App.4th 1157, 1174), and several cases have upheld a multiplier of 1.5. (See *Downey Cares*
14 *v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 993-994; *Beasley v.*
15 *Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419; *Edgerton v. State Personnel Bd.* (2000)
16 83 Cal.App.4th 1350, 1363.)

17 Given the fees requested and fees incurred, the Court need not apply a lodestar multiplier
18 since the fees incurred exceed the fees requested. Nevertheless, Plaintiff will analyze the fees
19 under a Lodestar cross-check.

20 *i. The Quality of Plaintiff's Representation Was Strong.*

21 The quality of Plaintiff's representation was strong and effective exemplified through the
22 fact the Labor Commissioner has not objected.

23 *ii. Plaintiff's Counsel Obtained an Outstanding Result in Court.*

24 As discussed above, counsel achieved a favorable result for the aggrieved employees by
25 obtaining 27% of the expected maximum exposure.

1 iii. *Plaintiff's Counsel Assumed a Delayed Contingent Risk That Could Have Netted*
2 *(and might still net) A Zero Recovery and a Loss of Valuable Firm Operating*
3 *Capital.*

4 The case of *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33 explains the economic
5 rationale for fee enhancement in contingency cases:

6 “A contingent fee must be higher than the fee for the same legal services as
7 they are performed. The contingent fee compensates the lawyer not only for
8 the legal services he renders but for the loan of those services. The implicit
9 interest rate on such a loan is higher because the risk of default (the loss of the
10 case, which cancels the debt of the client to the lawyer) is much higher than
11 that of conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed.
12 1992)pp. 534, 567.) ‘A lawyer who both bears the risk of not being paid and
13 provides legal services is not receiving the fair market value of his work if he
14 is paid only for the second of these functions. If he is paid no more, competent
15 counsel will be reluctant to accept fee award cases.”

16 (Emphasis added.)

17 The California Supreme Court has held that applying a multiplier in the lodestar analysis
18 is by no means a windfall:

19 “Under our precedents, the unadorned lodestar reflects the general local hourly
20 rate for a *fee-bearing case*; it does *not* include any compensation for contingent
21 risk, extraordinary skill, or any other factors a trial court may consider under
22 *Serrano III*. The adjustment to the lodestar figure, e.g., to provide a fee
23 enhancement reflecting the risk that the attorney will not receive payment if
24 the suit does not succeed, constitutes earned compensation; unlike a windfall, it
25 is neither unexpected nor fortuitous. Rather, it is intended to approximate
26 market-level compensation for such services, which typically includes a
27 premium for the risk of nonpayment or delay in payment of attorney fees.”

28 (*Ketchum, supra*, 24 Cal.4th at p. 1138, italics in original.)

 As explained in the Jackson Declaration more fully, plaintiff’s counsel assumed the risk
that they would recover zero when they accepted this case. For example, Mr. Jackson considered
numerous factors when deciding whether to accept this matter: the merits of the case, the
credibility and demeanor of the client, the chances of success, the amount of time his firm will
invest in the matter compared to what he considers to be the reasonable chances of a recovery on
the other end that will fully compensate plaintiff’s counsel for the amount of time invested, the
amount of costs his firm will need to invest over the course of the litigation compared to the
chances of success, and how long the case will proceed before either a judgment or settlement

1 occurs. (Jackson Decl. ¶¶ 3-15, Ex. D) Given the risks of certification and trial, the attorneys still
2 risk a zero recovery. The contingency risk is enormous.

3 Plaintiffs' counsel advanced 100% of the costs on this matter. (Jackson Decl. ¶ 14, Ex.
4 C.) This means that money used to pay costs was unavailable to the firm and is tied up in any
5 given legal matter until a recovery on the other end. Additionally, because that money is tied up
6 until the matter is resolved, it is unavailable to the firm to use for overhead, operating capital, or
7 on other matters my firm is prosecuting on a contingency basis. This presented an opportunity
8 lost, and must factor into the lodestar analysis. (*See Harman v. City and County of San*
9 *Francisco* (2007) 158 Cal.App.4th 407, 417-18—the preclusion of other employment by the
10 attorney due to the acceptance of the case a factor to be considered.)

11 The firm advanced the costs and attorney's time with the prospect that it would recover
12 nothing. Most importantly, the law concerning the lodestar method is designed to incentivize
13 strong attorneys to take on cases like this has proper representation. The fact that the plaintiff's
14 counsel achieved what they set out to achieve should not overshadow the risk they took to get
15 there. Given the contingency risks and the fees incurred, the total amount of fees requested
16 should be awarded.

17 e. COSTS

18 Plaintiff seeks \$8,969.97 in litigation costs. This amount represents costs incurred
19 including court-filing and process-serving fees, mediation costs; travel costs for court hearings,
20 mediation, postage costs, and expected filing fees for the instant motion. This amount of costs
21 requested is modest and reflects efficient litigation of the case. (Jackson Decl, ¶ 14, Ex. C)

22 V. CONCLUSION

23 For the reasons set forth herein, Plaintiff requests that the Court approve the proposed
24 settlement; approve the proposed notice; and adopt the Order filed concurrently herein.

25 Dated: December 16, 2021

JACKSON APC

A PROFESSIONAL CORPORATION

By: /s/ Armond M. Jackson

Armond M. Jackson

Attorney for Plaintiff Maria Velez