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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

FATEEMA BROWN, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

FAIR OAKS ESTATES, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 34-2020-00278787

Honorable Richard Sueyoshi
Department 53

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698, *ET SEQ.*)
SETTLEMENT AGREEMENT AND
ATTORNEYS’ FEES AWARD,
LITIGATION COSTS AWARD, AND
ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Reservation ID: 2641623]

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Fateema Brown); and
[Proposed] Order and Judgment filed
concurrently herewith]

Hearing Date: June 28, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 53

Complaint Filed: May 15, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that as soon as the matter may be heard, before the Honorable
2 Richard Sueyoshi in Department 53 of the Sacramento County Superior Court (Gordon D. Schaber
3 Courthouse), located at 720 9th Street, Sacramento, California 95814, Plaintiff Fateema Brown
4 (“Plaintiff”) will and hereby does move for entry of the following orders:

- 5 1. Granting approval, pursuant to Labor Code section 2699(1), of the settlement between
6 Plaintiff and Defendant Fair Oaks Estates, Inc. (“Defendant”) (collectively, known as
7 the “Parties”) of the claims brought pursuant to Private Attorneys General Act of 2004
8 (“PAGA”) as set forth in the Confidential Settlement Agreement and Release
9 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
10 declaration of Douglas Han;
- 11 2. Approving the PAGA Penalties Fund available for payment of PAGA penalties that is
12 estimated to be \$96,134.84, seventy-five percent (75%) of which (\$72,101.13) will be
13 paid to the California Labor and Workforce Development Agency (“LWDA”)
14 (“LWDA Payment”) and twenty-five percent (25%) of which (\$24,033.71) will be paid
15 to the Settlement Group Members (“Net Settlement Amount” and “Individual
16 Settlement Awards”);
- 17 3. Directing Defendant to transfer the Gross Settlement Amount to the Settlement
18 Administrator in accordance with the Settlement Agreement;
- 19 4. Directing the mailing of the Individual Settlement Awards accompanied by an
20 explanatory letter providing notice of PAGA settlement to Settlement Group Members;
- 21 5. Awarding \$10,000 to Plaintiff as the Enhancement Payment; and
- 22 6. Awarding Settlement Administration Costs to the Settlement Administrator of \$5,000;
- 23 7. Awarding to Plaintiff’s Counsel, Justice Law Corporation, an Attorneys’ Fees Award
24 of \$76,000 as compensation for reasonable attorneys’ fees and Litigation Costs Award
25 of \$12,865.16 as reimbursement for litigation costs and expenses incurred in litigating
26 the PAGA claim, pursuant to Labor Code section 2699(g)(1) and Code of Civil
27 Procedure section 1021.5;

28 ///

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

8 This motion will be based upon the following Memorandum of Points and Authorities,
9 the Settlement Agreement, the Declaration of Plaintiff's Counsel (Douglas Han) and the
10 Declaration of Plaintiff (Fateema Brown) in support thereof, the pleadings and other records on
11 file with the Court in this matter, and such evidence and oral argument as may be presented at the
12 hearing on this motion.

13
14 Dated: June 2, 2022

JUSTICE LAW CORPORATION

15
16 By:  _____

Douglas Han
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(1)(2), Plaintiff seeks approval of the Settlement Agreement
4 entered by the Parties. Plaintiff entered the Settlement Agreement on behalf of herself and all
5 current and former hourly-paid employees (whether hired directly or through a staffing agency) of
6 Defendant at any time from March 9, 2019, through April 8, 2022 (“Settlement Group,”
7 “Settlement Group Members,” and “Settlement Period”).

8 Subject to Court approval, the Parties agreed to resolve this case brought, pursuant to the
9 PAGA, for a Gross Settlement Amount of \$200,000. The Gross Settlement Amount is inclusive of
10 the: (1) amount allocated for the LWDA that will be distributed in accordance with Labor Code
11 section 2699(i); (2) Attorneys’ Fees Award and the Litigation Costs Award to Plaintiff’s Counsel,
12 pursuant to Labor Code section 2699(g)(1); (3) Enhancement Payment to Plaintiff; and (4)
13 Settlement Administration Costs to the Settlement Administrator.

14 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets the
15 requirements for Court approval. Plaintiff respectfully requests this Court approve the Settlement
16 and award the Attorneys’ Fees Award, Litigation Costs Awards, Enhancement Payment, and
17 Settlement Administration Costs provided by the Settlement and requested herein.

18 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

19 On or about March 9, 2020, Plaintiff served a notice letter to the LWDA and Defendant,
20 pursuant to Labor Code Section 2699.3, to notify LWDA and Defendant of alleged Labor Code
21 violations. On or about May 15, 2020, Plaintiff filed this representative PAGA action via a
22 complaint for civil penalties for violation of Labor Code sections 2698, *et seq.* (PAGA).¹

23 Plaintiff’s core allegations are that Defendant has systematically violated the Labor Code,
24 with respect to Plaintiff and Settlement Group Members, *inter alia*, by: (1) failing to compensate
25 minimum and overtime wages; (2) failing to provide compliant meal and rest breaks and pay
26 associated premium pay; (3) failing to timely pay wages; (4) failing to provide compliant wage
27

28 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Han Dec.”), ¶ 10.)

statements; and (5) failing to reimburse necessary business expenses.²

After conducting significant investigation of the facts and law, the Parties' counsel engaged in extensive settlement negotiations to resolve the entire matter. The Parties participated in private mediation on April 7, 2022, before experienced mediator Lisa Klerman. Under the auspices of the mediator, the Parties reached a settlement.³

Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor Code section 2699(1)(2).

III. SUMMARY OF THE SETTLEMENT TERMS

A. Settlement Group Members

The Settlement Group Members who are covered by the Settlement are:

All current and former hourly-paid employees (whether hired directly or through a staffing agency) of Defendant at any time from March 9, 2019, through April 8, 2022.⁴

Based on information provided by Defendant and Plaintiff's expert's analysis, there are approximately 2,843 pay periods during the Settlement Period.⁵

B. Distribution of the Gross Settlement Amount

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of \$200,000.⁶ The PAGA Penalties Fund will be the Gross Settlement Amount less the following amounts: (1) Attorneys' Fees Award of \$76,000; (2) Litigation Costs Award of \$12,865.16; (3) Enhancement Payment of \$10,000; and (4) Settlement Administration Costs of \$5,000.⁷ Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed to Settlement Group Members based on the total number of pay periods they worked as an hourly-paid employee of Defendant

² (Han Dec., *supra*, at ¶ 21.)

³ (*Id.* at ¶¶ 15-16.)

⁴ (Settlement Agreement and Release, attached as **Exhibit 2** to the Declaration of Douglas Han filed concurrently herewith ("Settlement Agreement"), §§ 5.a., 5.b.)

⁵ (Han Dec., *supra*, at ¶ 10.)

⁶ (Settlement Agreement, *supra*, at § 7.a.)

⁷ (*Id.* at §§ 7.b.i., 7.b.ii, 7.b.iii., 7.b.iv.)

during the Settlement Period, and the remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the LWDA, pursuant to Labor Code section 2699(i).⁸

C. Distribution of the PAGA Penalties Fund

Within ten (10) calendar days after the Effective Date, Defendant shall: deposit Two Hundred Thousand Dollars (\$200,000.00) with the Settlement Administrator.⁹ Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue the payments required by the Agreement to the appropriate entities or persons. Each Individual Settlement Award will be accompanied by an explanatory letter.¹⁰

Any Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void and the amount of those checks will be directed to the California State Controller for the deposit in the Unclaimed Property Fund in the name of the employee.¹¹

The PAGA Penalties Fund is currently estimated to be \$96,134.84.¹² In conformity with the PAGA statute, seventy-five percent (75%) of the PAGA Penalties Fund shall be distributed to the LWDA as its share of the Settlement attributable to civil penalties under Labor Code section 2699(i), and the remaining twenty-five percent (25%) will be known as the Net Settlement Amount to be paid to each Settlement Group Member as their Individual Settlement Award.¹³

Individual Settlement Awards shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income. Accordingly, an IRS Form 1099 will be issued to each Settlement Group Member in connection with his or her Individual Settlement Award if it is \$600 or more.¹⁴

⁸ (Settlement Agreement, *supra*, at §§ 7.b.v.)

⁹ (*Id.* at § 8.a.)

¹⁰ (*Id.* at §§ 8.c., 8.d.i.)

¹¹ (*Id.* at § 8.d.ii.)

¹² (Han Dec., *supra*, at ¶ 18.)

¹³ (Settlement Agreement, *supra*, at §§ 7.b.v.A, 7.b.v.B.)

¹⁴ (*Id.* at § 7.c.iii.)

1 **D. The Scope of the Release in the Settlement Agreement**

2 The Agreement and the judgment to be entered by the Court following the Agreement,
3 forever bar Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including,
4 but not limited to, any and all allegedly aggrieved employees, from pursuing any action against
5 Defendant under PAGA, Labor Code section 2698, *et seq.*, based on or arising out of violations
6 of Labor Code sections alleged in the Lawsuit, and claims that could have been asserted in the
7 Lawsuit based upon the facts alleged in Plaintiff’s Complaint through the end of the Settlement
8 Period (“Released Claims”). The Released Claims include, but are not limited to, claims under
9 the PAGA for civil penalties for alleged violations of Labor Code sections 201- 204, 226, 226.7,
10 256, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198; and claims for attorneys’ fees,
11 costs, or interest resulting therefrom.¹⁵

12 **E. No Right to Object to or Opt Out of the Settlement**

13 Because “a PAGA action is a statutory action for penalties brought as a proxy for the state,
14 rather than a procedure for resolving the claims of other employees, there is no need to protect
15 absent employees’ due process rights[.]” *Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.
16 “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability
17 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D.
18 Cal. Apr. 2, 2010), 2010 WL 1340777, at p. *5. A representative PAGA action need not satisfy
19 class action requirements, and no due process concern arises from the fact that there are “nonparty
20 aggrieved employees who are not given notice of, and an opportunity to be heard in, a
21 representative action that is not brought as a class action.” *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
22 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no
23 “due process concerns arise under PAGA because absent employees do not own a personal claim
24 for PAGA civil penalties and whatever personal claims the absent employees might have for relief
25 are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated*
26 *Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v.*
27 *CLS Trans. Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

28

¹⁵ (Settlement Agreement, *supra*, at § 9.)

1 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
2 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Sup.*
3 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)
4 A “judgment in such an action is binding not only on the named employee plaintiff but also on
5 government agencies and any aggrieved employee not a party to the proceeding” because “the
6 employee plaintiff represents the same legal right and interest as state labor law enforcement
7 agencies[.]” “collateral estoppel applies [...] against those for whom the party acted as an agent
8 or proxy[.]” and “[w]hen a government agency is authorized to bring an action on behalf of an
9 individual or in the public interest, and a private person lacks an independent right to bring the
10 action, a person who is not a party but who is represented by the agency is bound by the judgment
11 as though the person were a party.” *Arias, supra*, at 985-986 (citations omitted).

12 As such, consistent with the law, the Settlement does not provide for a procedure for
13 Settlement Group Members to opt out or otherwise exclude themselves the Settlement.

14 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

15 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
16 herself and on behalf of other aggrieved employees and the State to recover civil penalties which
17 are specifically established by the PAGA with respect to provisions of the Labor Code that do not
18 otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which,
19 outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code §
20 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code
21 section 2699.3. See Lab. Code § 2699(a).

22 The settlement of a PAGA claim requires court approval. See Lab. Code § 2699(l)(2)
23 (“The superior court shall review and approve any settlement of any civil action pursuant to this
24 part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
25 considered a class action but a law enforcement action” and, therefore, does not have to meet the
26 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
27 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715,
28 at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not

1 satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal.
2 Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves
3 analysis of several unique features that render the approval process distinct from approval of a
4 class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a
5 negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Lab. Code §
6 2699(1)(2)). Although Labor Code section 2699(1) does not set forth the criteria on which a PAGA
7 settlement is to be judged, courts have approved settlements of PAGA claims.¹⁶ In a PAGA case,
8 the Court’s focus is not the amount which “aggrieved employees” are to receive, but instead,
9 whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA
10 is “to incentivize private parties to recover civil penalties for the government that otherwise may
11 not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-*
12 *Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties
13 recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor
14 laws . . . and for education of employers and employees about their rights and responsibilities
15 under this code, to be continuously appropriated to supplement and not supplant the funding to
16 the agency for those purposes.” See Lab. Code § 2699(j). The recovery of penalties on behalf of
17 the state, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated,*
18 *supra*, 46 Cal.4th at 1003 (stating that the PAGA is mechanism for “an aggrieved employee to
19 recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor
20 law enforcement agencies”); see also *Iskanian, supra*, at 381.

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25 ¹⁶ (See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup.
26 Ct., Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct.,
27 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
28 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at
*14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v.*
Ruiz Food Prods. (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions*
Case (2010) 186 Cal.App. 4th 576, 589.)

1 A PAGA settlement is a settlement of claims for penalties and other remedies which the
2 LWDA could assess and collect on behalf of employees without their involvement or approval.
3 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
4 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
5 p. *5. This renders the approval process of a PAGA settlement distinct from a class action
6 settlement, as the Court need not employ the two-step approval process normally required for a
7 class action settlement.

8 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

9 **A. The Factors Giving Rise to a Presumption of Fairness Exist.**

10 The Parties reached the Settlement through arm’s-length negotiations through experienced
11 counsel with the assistance of an experienced and respected private mediator, Lisa Klerman, at a
12 full-day mediation. Under the auspices of the mediator, the Parties reached a settlement.¹⁷ A
13 settlement agreement that is “the product of extensive and hard-fought adversarial negotiations
14 between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.*
15 (2001) 91 Cal.App.4th 224, 245.

16 The Settlement is presumptively fair. This because: (1) it is the product of non-collusive,
17 arm’s-length negotiations overseen by an independent mediator; (2) it was negotiated by counsel
18 with significant experience in similar wage-and-hour litigation; and (3) it occurred after the
19 Parties’ counsel engaged in significant investigation to evaluate the strength and potential value
20 of the PAGA claim, and the risks of litigating this claim through trial.¹⁸

21 After engaging in discovery, the Parties participated in settlement negotiations to try and
22 resolve this case. These efforts included participating in extensive formal mediation conducted on
23 April 7, 2022. During the mediation, the Parties discussed all aspects of the case. This included
24 the Defendant’s defenses, the risks and delays of further litigation, the risks to both Parties of
25 proceeding with trial, the law relating to representative PAGA actions, off-the-clock theory, and
26 meal and rest breaks, the evidence produced and analyzed, and the possibility of bifurcation of

27 ¹⁷ (Han Dec., *supra*, at ¶¶ 14-16.)

28 ¹⁸ (*Id.* at ¶¶ 14-15.)

1 discovery and/or trial and appeals. During all settlement discussions, Parties conducted their
2 negotiations at arm's-length from an adversarial position.¹⁹

3 Based on all of the information available and with the assistance of the experienced
4 mediator, the Parties agreed this matter is well-suited for settlement given the strengths and
5 weaknesses of the PAGA claim.²⁰ Plaintiff's Counsel believe the Settlement is a fair, adequate,
6 and reasonable resolution of this matter.²¹ Plaintiff's Counsel have extensive experience in
7 representative and class action wage-and-hour litigation and used that experience to achieve a
8 great result for Plaintiff, Supplemental Group Members, and the LWDA.²² Therefore, the Court
9 should give considerable weight to the competency, experience, and opinion of counsel and the
10 involvement of a neutral mediator in assuring the Settlement is a product of hard-fought
11 negotiations entered without collusion. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp.
12 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel*
13 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel
14 should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D.
15 Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced
16 mediator in the settlement process confirms that the settlement is non-collusive").

17 **B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes**
18 **in the Litigation Strongly Favor Approval of the Settlement.**

19 For Plaintiff to recover civil penalties, she would have to prove the underlying Labor Code
20 violations, demonstrate Settlement Group Members suffered, and demonstrate Defendant's
21 conduct gave rise to penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572
22 F.Supp.2d 1169, 1181-82 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other
23 claims. Because all of Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.").
24

25 ¹⁹ (Han Dec., *supra*, at ¶¶ 15, 20-23.)

26 ²⁰ (*Id.* at ¶ 24.)

27 ²¹ (*Id.* at ¶ 40.)

28 ²² (*Id.* at ¶¶ 2-8; Exhibit 1.)

1 Plaintiff's core allegations are Defendant has systematically violated the Labor Code, with
2 respect to Plaintiff and Settlement Group Members, *inter alia*, by: (1) failing to compensate
3 minimum and overtime wages; (2) failing to provide compliant meal and rest breaks and pay
4 associated premium pay; (3) failing to timely pay wages; (4) failing to provide compliant wage
5 statements; and (5) failing to reimburse necessary business expenses.²³

6 Although wage-and-hour actions are amenable to resolution,²⁴ some courts have found the
7 issues raised here raise individualized issues and/or are unmanageable and are not suitable for
8 adjudication as to a group of employees.²⁵ Defendant contended courts have found due process to
9 defendant requires the adjudication of a PAGA claim meet a "manageability" requirement. See,
10 e.g., *Liuy v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at
11 **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would
12 be necessary, making the PAGA claim unmanageable).

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15 ²³ (Han Dec., *supra*, at ¶ 21.)

16 ²⁴ (See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
17 383-84, *modified on other grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014
18 B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate
19 the preference for efficient and effective means of resolving wage-and-hour claims, including
20 misclassification and overtime, recognizing that "statistical sampling may provide assistance in
21 identifying the realistic demands of the job and illuminating whether the typical employee was
22 able to meet those expectations" and that "[b]y refocusing its analysis on the policies and practices
of the employer and the effect those policies and practices have on the putative class . . . the trial
court may in fact find class analysis a more efficient and effective means of resolving plaintiffs'
overtime claim").)

23 ²⁵ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 25, 29, 31, and 34-35
24 (determining that in a misclassification case "based on allegations that the employer consistently
25 imposed a uniform policy or de facto practice on [employees], the party must still demonstrate
26 that the illegal effects of this conduct can be proven efficiently and manageably within a class
27 setting" and in litigating representative actions the procedures utilized by the court "may not be
28 used to abridge a party's substantive rights," including "abridge[ing] [the defendant's]
presentation of [a defense] simply because that defense was cumbersome to litigate," because of
"principles of due process"); *Mies v. Sephora USA, Inc.* (2015) 234 Cal. App. 4th 967, 971 and
982—86 (affirming decision denying class certification in a misclassification case because
determining liability would require an individual assessment as to how each of the employees
spent their time).)

1 Defendant maintained several defenses to Plaintiff's theory of liability, which had the
2 potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant
3 maintained, and continues to maintain, that it had, and continues to have, legally compliant
4 employment policies and practices throughout the statutory period. Defendant also denied it ever
5 violated any provision of the Labor Code. Finally, Defendant denied, and continues to deny, that
6 this case is appropriate for representative treatment for any purpose other than the Settlement.²⁶

7 Defendant may also challenge Plaintiff's standing as a Settlement Group Member and
8 deny that Defendant's other employees, whom Plaintiff sought to represent, were aggrieved.²⁷
9 This would pose a risk to recovery because, at the time, multiple courts had taken an approach
10 requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or
11 trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at p. 1001 (noting
12 that PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action");
13 *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding
14 that judicial economy supported bifurcation because of the difficulties and inherent uncertainties
15 of being able to establish liability with respect to a large number of potentially aggrieved
16 employees and noted that "PAGA's public purpose would be ill-served if the court finds [the
17 plaintiff] has not been aggrieved by a Labor Code violation."); *Horton v. Jones* (1972) 26
18 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid
19 waste of time and money on trial and litigation of issues could be rendered made moot).

20 Defendant also argued an important feature of PAGA is a court retains discretion to lower
21 the penalties if to do otherwise would result in an award that is "unjust, arbitrary and oppressive,
22 or confiscatory." Lab. Code § 2699(e)I(2); *see also Thurman v. Bayshore Transit Mgmt., Inc.*
23 (2012) 203 Cal.App.4th 1112, 1136. As stated above, Defendant argued it maintained legally
24 compliant employment policies and practices throughout the statutory period. Defendant has also
25 continuously denied it ever violated any provision of the Labor Code.²⁸ Even if such violations

26 ²⁶ (Han Dec., *supra*, at ¶ 22.)

27 ²⁷ (*Id.* at ¶ 23.)

28 ²⁸ (*Id.* at ¶¶ 22-23.)

1 occurred, Defendant contended such violations would only be “initial violations,” meaning
2 heightened “subsequent violation” penalties were not warranted. Lab. Code § 2699(f)(2); *see also*
3 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (Employer cannot be
4 presumed to be aware that its continuing underpayment of employees is a violation subject to
5 penalties until has been notified that it is a violation).²⁹

6 Defendant argued the Court was unlikely to assess cumulative penalties for the maximum
7 numbers of possible separate Labor Code violations because it would be unjust, arbitrary,
8 oppressive, and/or confiscatory.³⁰ By extension, while Plaintiff maintains her PAGA claims have
9 merit, Plaintiff and Plaintiff’s Counsel considered the strengths and weaknesses of each side’s
10 position and the uncertainty of how the case might have concluded if litigation continued.³¹

11 The provisions of the Labor Code potentially triggering PAGA penalties in this case
12 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
13 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Defendant asserts
14 that, regardless of the results of the underlying causes of action, PAGA penalties are not
15 mandatory but permissive and discretionary. Defendant also maintains that, in addition to its
16 strong arguments against the underlying claims, it had a strong argument that it would be unjust
17 to award maximum PAGA penalties given the law’s unsettled state.³² (*Thurman*, 203 Cal.App.4th
18 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking
19 and limited to the initial violation, the PAGA penalties would be **\$26,800** (268 employees x \$100
20 initial violations) on the low end and **\$160,800** (268 employees x \$100 x 6 theories of recovery)
21 on the high end.³³

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24 ²⁹ (Han Decl., *supra*, at ¶¶ 27-28.)

25 ³⁰ (*Id.* at ¶ 23.)

26 ³¹ (*Id.* at ¶ 24.)

27 ³² (*Id.* at ¶ 25.)

28 ³³ (*Id.* at ¶¶ 26-29.)

1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 Many of the causes of action brought were cumulative for which the Court may or may not stack
3 the violations. Also, the off-the-clock, overtime, reimbursement, and meal and rest period
4 violations did not occur every single pay period. Thus, a Gross Settlement Amount of \$200,000
5 to PAGA civil penalties was reasonable and significant. When PAGA penalties are negotiated in
6 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
7 of other Class Members,” such amounts are generally considered reasonable. *Hopson v.*
8 *Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3,
9 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not
10 abuse its discretion in approving a settlement which does not allocate any damages to the PAGA
11 claims.”). Plaintiff’s Counsel negotiated that about an average of **\$70.35** in penalties per aggrieved
12 pay period would be fair and reasonable [$\$200,000 \div 2,843$ Pay Periods in PAGA Period date
13 range = **\$70.35**]. Considering the recent cases justifying \$5 per pay period, *see e.g., Carrington v.*
14 *Starbucks Corp.* 30 Cal.App.5th 504 (2018), **\$70.35** per pay period is an excellent result.³⁴

15 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

16 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
17 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement
18 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
19 litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
20 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

21 Both sides used the pre-mediation time period to investigate the veracity, strength, and
22 scope of the PAGA claim. Plaintiff’s Counsel propounded multiple sets of discovery requests
23 (Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Production of
24 Documents, Set One, Requests for Admissions, Set One). Parties also exchanged documents and
25 data relevant to Plaintiff’s claim and Defendant’s defenses in an effort to determine the potential
26 value and strength of the PAGA claim.³⁵ The Parties’ Counsel undertook significant investigation,

27 ³⁴ (Han Dec., *supra*, at ¶ 30.)

28 ³⁵ (*Id.* at ¶¶ 14, 24.)

1 and invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's
2 claims, such as Plaintiff's Counsel's calculation of the potential penalties recoverable.³⁶

3 If the case had not settled, the Parties would have to conduct additional extensive discovery
4 to prepare for trial. Defendant has indicated it would aggressively litigate this case. Litigating a
5 complex PAGA action is inherently expensive, and the litigation could continue beyond final
6 judgment if either party were to appeal adverse rulings to the Court of Appeal.³⁷ There is a real
7 possibility Plaintiff would recover nothing, for herself, or on behalf of Settlement Group Members
8 or the LWDA, after more than two (2) years of labor-intensive litigation. Avoiding these risks and
9 future contentious litigation involving significant costs favors settlement.

10 **D. The Settlement Is Fair, Adequate, and Reasonable.**

11 "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an
12 abandoning of highest hopes.'" *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1981) 688
13 F.2d 615, 624. "The proposed settlement is not to be judged against a hypothetical or speculative
14 measure of what might have been achieved by the negotiators." *Id.* at 625.

15 The Settlement provides a significant monetary benefit to the LWDA and Settlement
16 Group Members and falls within the range of acceptable settlement under the circumstances.
17 Under the Agreement, Defendant will pay a Gross Settlement Amount of \$200,000.³⁸ Subject to
18 Court Approval, the following amounts will be subtracted from the Gross Settlement Amount to
19 yield the PAGA Penalties Fund: (1) Attorneys' Fees Award of \$76,000; (2) Litigation Costs
20 Award of \$12,865.16; (3) Settlement Administration Costs of \$5,000; and (4) Enhancement
21 Payment of \$10,000. The PAGA Penalties Fund is currently estimated to be \$96,134.84, seventy-
22 five percent (75%) of which (\$72,101.13) will be the LWDA Payment and twenty-five percent
23 (25%) of which (\$24,033.71) will be the Net Settlement Amount.³⁹ The proposed plan of
24

25 ³⁶ (Han Dec., *supra*, at ¶¶ 13-14.)

26 ³⁷ (*Id.* at ¶ 22.)

27 ³⁸ (Settlement Agreement, *supra*, at § 7.a.)

28 ³⁹ (*Id.* at §§ 7.b.i., 7.b.ii., 7.b.iii., 7.b.iv., 7.b.v.)

1 allocation of the Net Settlement Amount fully complies with Labor Code section 2699(i).

2 Plaintiff and Plaintiff's Counsel recognize the expense of continued proceedings necessary
3 to litigate the disputes through trial and any possible appeals. Plaintiff and Plaintiff's Counsel
4 have considered the uncertainty and risk of the outcome of further litigation, and the difficulties
5 and delays inherent in such litigation. Plaintiff and Plaintiff's Counsel are aware of the burdens
6 of proof necessary to establish liability and the difficulties in establishing Defendant's liability
7 for, and the right to recover, penalties. Plaintiff and Plaintiff's Counsel considered Defendant's
8 agreement to enter a settlement conferring significant relief upon the LWDA and Settlement
9 Group Members.⁴⁰ Considering all the facts in this case, Plaintiff and Plaintiff's Counsel have
10 determined the Settlement is in the best interests of the LWDA and Settlement Group Members.⁴¹

11 As discussed in section II.1.D, *infra*, payment of these penalties is conditioned on a limited
12 release of claims under PAGA. The Settlement does not include a general release of claims on
13 behalf of the non-party Settlement Group Members nor does it release their non-PAGA
14 substantive claims for the underlying Labor Code violations. "Absent employees do not own a
15 personal claim for PAGA civil penalties and whatever personal claims the absent employees might
16 have for relief are not at stake." *Williams, supra*, 3 Cal.5th at 547. In other words, with respect to
17 Settlement Group Members, the effect of the Settlement is only to bar Settlement Group Members
18 from pursuing any representative and/or individual PAGA claim for civil penalties, for purported
19 Labor Code violations during the period covered by the Settlement.

20 The result achieved and the PAGA allocation provided by the Settlement are well within
21 the range of acceptable settlement under the circumstances, especially when compared to the
22 settlement of PAGA claims approved as reasonable in other cases.⁴² The value obtained for

23 ⁴⁰ (Han Dec., *supra*, at ¶¶ 21, 24.)

24 ⁴¹ (*Id.* at ¶ 40.)

25 ⁴² (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
26 (May 2017) (approving \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia*,
27 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of
28 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving \$10,000 out of \$518,245
toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving \$10,000 out

(Footnote continued)

1 settlement of the PAGA claim is very significant, and it will be distributed in accordance with the
2 PAGA statute, to supplement the LWDA budget to educate employees and employers.

3 **E. The Experience and Views of Plaintiff’s Counsel Favor Settlement Approval.**

4 Plaintiff’s Counsel are highly experienced in complex representative and class action
5 wage-and-hour litigation.⁴³ Plaintiff’s Counsel believe the benefit conferred by the Settlement is
6 eminently fair and reasonable and is in the best interests of the LWDA and Settlement Group
7 Members.⁴⁴ The courts have acknowledged “the interests of plaintiff, counsel and other potentially
8 aggrieved employees are largely aligned. All stand to gain from proving as convincingly as
9 possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548
10 (citing Lab. Code § 2699(g)(1)(i)).

11 **VI. APPROVAL OF THE REQUESTED ATTORNEYS’ FEES.**

12 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

13 The Settlement establishes a Gross Settlement Amount of \$200,000.⁴⁵ The Settlement
14 provides for Plaintiff’s Counsel to apply to the Court for an Attorneys’ Fees Award of up to thirty-
15 eight percent (38%) of the Gross Settlement Amount, which is \$76,000.⁴⁶ The requested attorneys’
16 fees is commensurate with: (1) the risk Plaintiff’s Counsel took in bringing and litigating this case;
17 (2) the time, effort and expense dedicated to the case; (3) the skills and determination Plaintiff’s
18 Counsel have shown; (4) the value that Plaintiff’s Counsel have achieved for Plaintiff, the LWDA,
19 and Settlement Group Members; and (5) the other cases Plaintiff’s Counsel could not pursue to
20 devote its time and efforts to this matter.

21 _____
22 of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14
23 (approving \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom*
24 *Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a
settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the
lawsuit).)

25 ⁴³ (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.)

26 ⁴⁴ (*Id.* at ¶ 40.)

27 ⁴⁵ (Settlement Agreement, *supra*, at § 7.a.)

28 ⁴⁶ (*Id.* at § 7.b.i.A.)

1 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
2 of right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees
3 and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by
4 definition "for the benefit" of others and has secured monetary awards for a large number of
5 Settlement Group Members, as well as the LWDA.⁴⁷

6 The payment to the LWDA will also benefit the agency in enforcing labor laws and
7 educating "employers and employees about their rights and responsibilities under [the Labor
8 Code]." Lab. Code § 2699(i).

9 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
10 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
11 confirmed by the California Supreme Court in recent years. *Laffitte v. Robert Half Int'l, Inc.*
12 (2016) 1 Cal.5th 480 at pp. 486 & 506. While trial courts have discretion to apply either a lodestar
13 method or percentage-of-the-fund method, the California Supreme Court has taken the position
14 that trial courts also "retain the discretion to forgo a lodestar cross-check and use other means to
15 evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage of fund
16 method survives in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91
17 Cal.App. 4th at p. 253.

18 Courts award fees to serve as an economic incentive for lawyers to undertake litigation to
19 achieve increased access to the judicial system for meritorious claims and to enhance deterrents
20 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
21 not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee*
22 *Awards* (2d ed. 1993) 1041 at p. 6.

23 ///

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25 ///

27 ⁴⁷ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
28 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit,"
"public interest," and "large class of persons" requirements of Code of Civil Procedure section
1021.5, regardless of plaintiff's personal motivation).)

1 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
2 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
3 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; see also *Laffitte, supra*, 1 Cal.5th 480 at 506.
4 Indeed, it is long settled that the “experienced trial judge is the best judge of the value of
5 professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

6 The percentage method is particularly appropriate where a common monetary fund has
7 been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset*
8 *Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a
9 “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a
10 reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil*
11 *Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at p.1808.

12 The percentage fee method is preferred in representative actions because “it better
13 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
14 Cal.App.4th at p. 49. California law provides that the award for attorneys’ fees should be
15 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
16 based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47-50;
17 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
18 defendant agrees to pay the attorneys a percentage of the fund created by the settlement, use of
19 that percentage method is appropriate. *Id.* at 32. Fee awards that undercompensate counsel for
20 their work will “chill the private enforcement essential to the vindication of many legal rights and
21 obstruct the representative actions that often relieve the courts of the need to separately adjudicate
22 numerous claims,” *Id.* at 3. Therefore, fees in class and representative actions should approximate
23 the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client
24 in comparable litigation. *Id.* at 48. “The ultimate goal ... is the award of a ‘reasonable’ fee to
25 compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy*
26 *Cases* (2009) 175 Cal.App.4th 545, 557-558 (quotation omitted). Courts have awarded fees as
27 high as fifty percent (50%) of the settlement recovered, depending on the case’s circumstances.⁴⁸

28 ⁴⁸ (See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’

(Footnote continued)

1 Plaintiff's Counsel's application for attorneys' fees, in light of the facts and circumstances
2 surrounding the case, is well within the range of reasonableness. Plaintiff's Counsel have
3 investigated and litigated this case for almost two (2) years before mediation, with the real
4 possibility of an unsuccessful outcome and no fee recovery.⁴⁹ The ongoing work has been
5 extensive, and ultimately successful in achieving a settlement resolution. See, § VI.B.1, *infra*.

6 Plaintiff's Counsel has borne all the risks and costs of litigation and will not receive any
7 compensation until recovery is obtained.⁵⁰ Plaintiff's Counsel are experienced in representative
8 and class action wage-and-hour litigation and used that experience to obtain a favorable result for
9 Plaintiff, Settlement Group Members, and the LWDA. Considering the amount of the fees
10 requested, work performed, risks incurred, success of this litigation, and experience of Plaintiff's
11 Counsel in handling similar matters, the requested Attorneys' Fees Award and the Litigation Costs
12 Award are reasonable and should be awarded.

13 **B. The Requested Attorneys' Fees Award is Reasonable Based on the Factors**
14 **Considered in Determination of Fee Awards.**

15 The factors which courts consider in determining whether fee awards are reasonable,
16 support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the
17 novelty and difficulty of the questions involved; (3) the requisite skills to perform the legal
18 services properly; (4) the preclusion of other employment by the attorney due to the acceptance
19 of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
20 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the

21 _____
22 fees of 45% of the \$7.3 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox*
23 *Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement
24 fund as attorney fees). California courts routinely approve attorneys' fee awards "average[ing]
25 around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11
26 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and
27 determined such a percentage fee was appropriate); see also, e.g., *Resendez v. Bridgestone Retail*
28 *Operations, LLC*, Los Angeles Sup. Ct., Case No. BC596892 (June 2016) (citing *Chavez, supra*,
162 Cal.App.4th at p. 66, n.11) (stating that a fee award of one-third of a PAGA settlement of
\$950,000 was "reasonable and consistent with fee awards in class action cases").)

⁴⁹ (Han Dec., *supra* at ¶¶ 11-13.)

⁵⁰ (*Id. supra*, at ¶ 37.)

1 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the
2 nature and length of the professional relationship with the client; and (12) awards in similar cases.
3 *Camden I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.

4 Each of the factors listed above favors the attorneys' fees sought herein. However, some
5 of the most relevant factors to this Court's fee determination will be addressed below. It should
6 be highlighted that the percentage award sought is commensurate with: (1) the results obtained by
7 Plaintiff's Counsel; (2) the extraordinary risks taken by Plaintiff's Counsel; (3) the novelty and
8 difficulty of this case; and (4) the skills displayed and the quality of work. As such, an award of
9 approximately thirty-eight percent (38%) of the Gross Settlement Amount is reasonable.

10 ***1. The Results Obtained***

11 The results attorneys obtain for their clients is an important factor when determining the
12 reasonability of a percentage-based fee. *See Laffitte*, 1 Cal. 5th at 489. In the legal marketplace,
13 law firms that obtain exceptional results for their clients can and do expect that those exceptional
14 results to be reflected in their fees.

15 The results obtained in this matter are certainly exceptional as Plaintiff's Counsel obtained
16 a settlement of \$200,000 without the need for extended litigation. Had this case gone to trial, there
17 was no guarantee the trial would have been short or either party would prevail. This issue would
18 have also been exacerbated by the legal expenses the Parties would have incurred from continued
19 litigation. By extension, even if the Parties did manage to reach a similar settlement at the later
20 stages of this case, it would have been severely undercut by the additional expenses incurred.

21 The Settlement represents a great resolution of this case given the risks inherent in
22 litigating a representative PAGA action. For example, Defendant argued Plaintiff's claims raised
23 individualized issues and were unmanageable. Defendant also challenged Plaintiff's standing as
24 a Settlement Group Member and denied any of its employees were aggrieved. Resolution of this
25 dispute at this stage is preferred, as the Parties were moving to the phase of litigation where
26 significant time and money would inevitably have to be spent to continue litigation and prepare
27 for trial. In contrast, the Settlement provides an immediate and automatic recovery.

28 ///

1 By agreeing to settle this case prior to trial, Plaintiff's Counsel used their skills and
2 experience to obtain a fair result at far less expense. By avoiding the uncertainties associated with
3 conducting a trial and Defendant's responses, Plaintiff's Counsel obtained those results more
4 quickly than if the matter had been litigated to final resolution. Under California law, this factor
5 also supports the requested fee. *See Lealao*, 82 Cal.App.4th at 51.

6 **2. The Extraordinary Risk Taken by Plaintiff's Counsel**

7 Whether or not representation is provided on a contingency basis is an important factor:

8 A contingent fee must be higher than a fee for the same legal services paid as they are
9 performed [and] [...] compensates the lawyer not only for the legal services he renders but
10 for the loan of those services. A lawyer who both bears the risk of not being paid and
11 provides legal services is not receiving the fair market value of his work if he is paid only
for the second of these functions. If he is paid no more, competent counsel will be reluctant
to accept fee award cases. (internal quotes and citations omitted)

12 *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823.

13 If attorneys assume a significant financial risk, they have the right to expect greater
14 compensation. Attorneys being paid on an hourly basis are assuming less risks. *See, e.g., Ketchum*,
15 24 Cal. 4th at 1132-33. The contingent risks undertaken by attorneys is a significant factor when
16 determining the percentage of the settlement fund to devote to attorneys' fees. *See, e.g., Laffitte*,
17 1 Cal.5th at 504 (noting that trial court had carefully considered risks and contingency involved
18 in awarding 33 and 1/3% fee); *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 2004-
19 05 (S.D. Fla. 2006) ("Factors indicating 'exceptional success' include success achieved under
20 unusually difficult or risky circumstances and the size of plaintiffs' recovery").

21 Plaintiff executed a contingent fee agreement. In other words, no recovery for Plaintiff, the
22 LWDA, or the Settlement Group would have meant no compensation for Plaintiff's Counsel for
23 299.5 hours of work already completed and \$12,865.16 litigation costs incurred.⁵¹

24 This was not a slam-dunk or clear-cut case either. Specifically, cases that involve complex
25 factual issues and unsettled law frequently encounter roadblocks. Several factors made this case
26 tricky, including: (1) the size of the Settlement Group (over 260 employees); (2) the difficulties
27 in pinning down job responsibilities, wages paid, meal and rest breaks taken; (3) the number of
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⁵¹ (Han Dec., *supra*, at ¶¶ 33, 37.)

documents that had to be reviewed and analyzed in preparation for the mediation; (4) the shifting wage-and-hour laws; and (5) Defendant's firm resistance to the relief.

3. *The Novelty and Difficulty of the Litigation*

The unsettled nature of the law, number of claims to be litigated, factual complexities underlying Defendant's procedures, policies, and practices, and a myriad of other issues made this case significantly more complex and difficult than the average lawsuit. Despite these difficulties, Plaintiff's Counsel overcame them by obtaining a settlement that is fair, adequate, and reasonable. The fact that Plaintiff's Counsel were able to obtain a great settlement despite these obstacles speaks volumes of their skills and experience. *See Lealao*, 82 Cal.App.4th at 42 (counsel's "special skill and experience of counsel" a relevant factor when determining fee award).

The Task & Time Chart, attached as **Exhibit 4** to the declaration of Douglas Han, set forth Plaintiff's Counsel's hours, allocating the total time to the tasks required to bring this matter to its successful conclusion. The chart is thorough, comprehensive, and demonstrates the effort to diligently manage this case. Specifically, the work commenced with the pre-filing case analysis and research and continues up to the moment of settlement.⁵²

As stated above, this was not a clear-cut case, and Plaintiff's Counsel had to overcome several roadblocks and obstacles before they could reach a reasonable settlement. These several roadblocks and obstacles ranged from determining the scope of the Settlement Group, ensuring that Plaintiff's claims did not raise individualized issues, locating a plaintiff that had standing, etc. The fact that this case has been litigated for more than two (2) years speaks volumes of the novelty and difficulty of this case that Plaintiff's Counsel had to deal with.

4. *The Skill Displayed and Quality of Work*

The level of skill displayed here and the excellent quality of work it produced also justify the requested fee. Plaintiff's Counsel are skilled and experienced representative and class action wage-and-hour litigators. The Task & Time Chart further illustrates how Plaintiff's Counsel implemented their skills and experience in litigating this case.⁵³

⁵² (Han Dec., *supra*, at ¶ 33; Exhibit 4.)

⁵³ (*Id.* at ¶ 33; Exhibit 4.)

1 Plaintiff's Counsel conducted investigations and discovery into the facts of the case. This
2 included, among other things, obtaining, reviewing, and analyzing a volume of documents and a
3 large sampling of payroll data for the Settlement Group Members. Plaintiff's Counsel also
4 conducted interviews with Plaintiff and Settlement Group Members. Other work performed by
5 Plaintiff's Counsel included, among other things: (1) case strategy and analysis; (2) drafting,
6 reviewing, and revising pleadings and a mediation brief; (3) preparing for and appearing for court
7 proceedings; (4) undertaking calculations of the value of the claims; and (5) preparing for and
8 attending the mediation and settlement negotiations.⁵⁴

9 Finally, not only did Plaintiff's Counsel have to determine the scope of the Settlement
10 Group, but they undertook the time-consuming task of interviewing Settlement Group Members.
11 This, in turn, assisted Plaintiff's Counsel with determining whether Plaintiff's claims raised any
12 individualized issues, which would have made this case unsuitable for adjudication as to a group
13 of employees. Despite all this, Plaintiff's Counsel used their extensive experience in
14 representative and class action wage-and-hour litigation to obtain a substantial settlement.

15 Thus, Plaintiff's Counsel's accumulated skills and expertise contributed to the settlement
16 in this case. Under California law, this factor (skills displayed and quality of work) also supports
17 the requested attorneys' fees. *See Lealao*, 82 Cal.App.4th at 51.

18 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.**

19 While the percentage-of-the-benefit approach is endorsed as the better approximation of
20 the workings of the marketplace than the lodestar approach, when a common fund is involved,
21 courts may use the lodestar method. A court tasked with cross-checking a percentage-based fee
22 considers the reasonableness of the lodestar figure, which is the time reasonably spent multiplied
23 by the reasonable hourly compensation of the attorneys involved in the litigation. *Serrano v.*
24 *Priest*, 20 Cal.3d 25, 48 (1977). The court may then enhance (or multiply) that figure after
25 considering factors like the novelty and complexity of the issues, the skill and expertise of counsel,
26 the extent that the litigation precluded other employment, and the risk involved. *Id.* at 49.

27 ///

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⁵⁴ (Han Dec., *supra*, at ¶ 13.)

1 Plaintiff's Counsel expended 299.5 hours in the litigation of this matter. Plaintiff's
2 Counsel's hourly rates utilized in the lodestar cross-check are within the range of those charged
3 by comparably qualified attorneys for similar work throughout California, including the Los
4 Angeles County area. Specifically, Plaintiff's Counsel's hourly rates are supported by the 2021
5 Real Rate Report that was compiled by Wolter Kluwer that surveyed the hourly rates charged in
6 2021 by hundreds of attorneys in the Los Angeles County. Likewise, Plaintiff Counsel's hourly
7 rates are also in line with the Laffey Matrix.⁵⁵

8 Plaintiff's Counsel documented lodestar is calculated to be \$205,242.50. When cross-
9 checked with the requested Attorneys' Fees Award, it results in a negative multiplier of 0.37. The
10 hours spent are fully documented and consistent with those that would be expected in a matter of
11 this duration, complexity, and amounts at stake.⁵⁶

12 ***1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours.***

13 Under California law, counsel is entitled to compensation for every hour reasonably spent
14 on the matter. *Ketchum*, 24 Cal.4th at 1133. Reasonableness is assessed by "the entire course of
15 the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and
16 the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal. App. 4th 440, 447.

17 This is a matter that required a significant amount of time and labor for over two (2) years.
18 Defendant made it clear that it disputed all claims alleged and raised several defenses to Plaintiff's
19 theory of liability. The case involved gathering and analyzing data from Defendant and the
20 Settlement Group. The handling of this matter involved a great amount of effort and required a
21 high-level of skill. Long and difficult battles would have followed as the case had gone to trial.
22 While Plaintiff's Counsel were gearing up for this battle, they undertook intense preparation to
23 attempt to resolve the entire matter through mediation. These intense preparations ranged from
24 locating and interviewing several putative settlement group members, reviewing myriad
25 documents, analyzing employees' time and pay data, and more.

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27 ⁵⁵ (Han Dec., *supra*, at ¶ 35; Exhibits 5-6.)

28 ⁵⁶ (*Id.* at ¶¶ 34, 36.)

1 The Task & Time Chart evidence the numerous tasks performed to seek all necessary
2 information. The total number of hours worked by Plaintiff's Counsel in pursuit of the litigation
3 is 299.5 hours.⁵⁷ Thus, Plaintiff's Counsel spent a reasonable number of hours working on this
4 matter, and their application for the Attorneys' Fees Award are within the range of reasonable.

5 ***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation***
6 ***in Light of Plaintiff's Counsel's Efforts and Experience.***

7 Plaintiff's Counsel's hourly rates are commensurate with the hourly rates of other wage-
8 and-hour class action attorneys in California. Specifically, Plaintiff's Counsel's hourly rates are
9 well within the range of rates charged by comparably qualified attorneys in the Los Angeles
10 County area and the legal profession in general for comparably complex work. By extension,
11 Plaintiff's Counsel's hourly rates are in line with the Laffey Matrix.⁵⁸

12 Plaintiff's Counsel's hourly rates are also reasonable for the following reasons: (1)
13 comparable hourly rates for similar services have been deemed to be reasonable in several cases
14 in California, particularly Los Angeles County cases; and (2) several surveys of legal rates have
15 supported Plaintiff Counsel's hourly rates (*i.e.*, 2021 Real Rate Report compiled by Wolters
16 Kluwer and the Laffey Matrix). Collectively, for the reasons stated above, this shows that Plaintiff
17 Counsel's hourly rates used for the lodestar calculation are well within the range of non-contingent
18 rates charged by comparable attorneys for similar work performed. Based on the attorney time
19 expended, the lodestar fees incurred to date total \$205,242.50, resulting in a negative multiplier
20 of 0.37 when cross-checked to the requested Attorneys' Fees Award.⁵⁹

21 In addition, the California Supreme Court has stated an attorney fee award that is higher
22 than the actual fees incurred is proper in contingency cases:

23 “ ‘[A] contingent fee contract, since it involves a gamble on the result, may properly provide
24 for a larger compensation than would otherwise be reasonable.’ ” The purpose of a fee
25 enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives
for attorneys ... into line with incentives they have to undertake claims for which they are

26 ⁵⁷ (Han Dec., *supra*, at ¶ 33; Exhibit 4.)

27 ⁵⁸ (*Id.* at ¶¶ 34-35; Exhibits 5-6.)

28 ⁵⁹ (*Id.* at ¶¶ 34, 36.)

1 paid on a fee-for-services basis.

2 *Ketchum*, 24 Cal.4th at 1132.

3 Moreover, the California Supreme Court has added that:

4 The economic rationale for fee enhancement in contingency cases has been explained as
5 follows: “A contingent fee must be higher than a fee for the same legal services paid as they
6 are performed. The contingent fee compensates the lawyer not only for the legal services
7 he renders but for the loan of those services. The implicit interest rate on such a loan is
higher because the risk of default (the loss of the case, which cancels the debt of the client
to the lawyer) is much higher than that of conventional loans.”

8 *Ketchum*, 24 Cal.4th at 1132-33.

9 In other words, “[F]ee enhancements are intended to compensate for the risk of loss
10 generally in contingency cases *as a class*.” *Ketchum*, 24 Cal.4th at 1133.

11 In light of these factors, the time spent and hourly rates of Plaintiff’s Counsel demonstrate
12 that Plaintiff’s Counsel’s lodestar is reasonable.

13 **VII. THE LITIGATION COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL**
14 **ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED**

15 The Settlement provides for Litigation Costs Awards of up to \$15,000.⁶⁰ Plaintiff’s
16 Counsel have incurred \$12,865.16 in litigation costs and expenses, which were reasonable and
17 necessary in the prosecution of this matter.⁶¹ Thus, Plaintiff’s Counsel request the Court order
18 reimbursement of the above-mentioned costs and expenses.

19 **VIII. APPROVAL OF THE PROPOSED ENHANCEMENT PAYMENT TO PLAINTIFF.**

20 The Settlement provides for an Enhancement Payment of \$10,000 to Plaintiff.⁶² The
21 purpose of such an award is to incentivize plaintiffs to step into the shoes of the state labor agency
22 and undertake the risks associated with initiating a lawsuit and serving in a representative capacity.
23 See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate
24 named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC*
25 (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce

26 ⁶⁰ (Settlement Agreement, *supra*, § 7.b.ii.)

27 ⁶¹ (Han Dec., *supra*, at ¶ 37; Exhibit 7.)

28 ⁶² (Settlement Agreement, *supra*, at § 7.b.iv.)

an individual to participate in the suit”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the [...] litigation.”); see also, e.g., *Resendez, supra*, Los Angeles County Court, Case No. BC59689 (approving \$10,000 Incentive Award in a PAGA action).

Plaintiff contributed considerable time and effort to the litigation to enforce the Labor Code on behalf of the LWDA, producing relevant documents and past employment records, and providing the facts and evidence necessary to support the allegations asserted in this action. Plaintiff was available whenever Plaintiff’s Counsel needed her and tried to obtain documents and information that would aid the litigation of the PAGA claim and recovery of benefits.⁶³ Plaintiff was also made aware of and accepted the risks and consequences associated with serving as the named plaintiff (*i.e.*, broader release, difficulty finding employment).⁶⁴ Finally, Plaintiff’s continued assistance has proven to be invaluable to Plaintiff’s Counsel with developing legal theories, interviewing putative settlement group members, and obtaining relevant documents.⁶⁵

Thus, it is reasonable and just for Plaintiff to receive an Enhancement Payment of \$10,000 in addition to the Individual Settlement Award he will receive as a Settlement Group Member.

IX. SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

Simpluris, Inc. (“Simpluris”), the Settlement Administrator, estimates the Settlement Administration Costs will total \$5,000.⁶⁶ The Settlement Administration Costs are intended to cover the costs incurred by Simpluris for performing the following administrative functions, among others: (a) updating the addresses for Settlement Group Members using industry-standard

⁶³ (Han Dec., *supra*, at ¶ 39; Declaration of Fateema Brown In Support of Plaintiff’s Motion for Approval of Private Attorneys General Act (Labor Code §§ 2698, et seq.) Settlement Agreement (“Brown Dec.”), ¶¶ 5-9.)

⁶⁴ (Han Dec., *supra*, at ¶ 39; Brown Dec., *supra*, at ¶ 10.)

⁶⁵ (Han Dec., *supra*, at ¶ 39; Brown Dec., *supra*, at ¶¶ 7-8.)

⁶⁶ (Han Dec., *supra*, at ¶ 38; Exhibit 8.)

1 mailing address databases; (b) calculating Individual Settlement Awards; (c) mailing settlement
2 payments to the appropriate entities and persons; (d) calculating taxes and distributing the
3 appropriate tax forms; and (e) sending uncashed Individual Settlement Award checks to the
4 California State Controller. Furthermore, Plaintiff's Counsel have worked with Simpluris before
5 and are familiar with their good reputation and work product.⁶⁷

6 The Court should approve the payment of the Settlement Administration Costs of \$5,000
7 to Simpluris, a necessary third-party to the notice and settlement process.

8 **X. CONCLUSION**

9 Plaintiff respectfully requests the Court approve the Settlement, including the plan of
10 allocation and distribution of the Gross Settlement Amount, Attorneys' Fees Award, Litigation
11 Costs Award, Settlement Administration Costs, and Enhancement Payment.

12
13 Dated: June 2, 2022

JUSTICE LAW CORPORATION

14 By: 
15 Douglas Han
16 Attorneys for Plaintiff

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⁶⁷ (Han Dec., *supra*, at ¶ 38.)

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On June 2, 2022, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, *ET SEQ.*) SETTLEMENT AGREEMENT AND ATTORNEYS' FEES AWARD, LITIGATION COSTS AWARD, AND ENHANCEMENT PAYMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case:	Brown v. Fair Oaks Estates, Inc.
LWDA/Court Case No.:	LWDA Case No.: CM-777236-20
	Court Case No.: 34-2020-00278787
	Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

**State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814**

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 2, 2022, at Pasadena, California.

Maith Andrus