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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—NORWALK

BRANDON MUNOZ, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

NORMAN WINDOW FASHIONS, an
unknown business entity; NORMAN
INTERNATIONAL SAN JOSE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20NWCV00279

Honorable Olivia Rosales
Department C

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LABOR CODE § 2698,
ET SEQ.) SETTLEMENT AGREEMENT
AND AWARD OF PLAINTIFF'S
COUNSEL PAYMENT, SERVICE
AWARD, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of Plaintiff's Counsel
(Edwin Aiwazian); Declaration of Plaintiff
(Brandon Munoz); and [Proposed] Order and
Judgment filed concurrently herewith]

Date: August 26, 2021
Time: 10:30 a.m.
Department: C

Complaint Filed: May 14, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 26, 2021, at 10:30 a.m. or as soon thereafter
2 as the matter may be heard before the Honorable Olivia Rosales in Department C of the Superior
3 Court of the State of California, for the County of Los Angeles, located at 12720 Norwalk Blvd.,
4 Norwalk, California 90650, Plaintiff Brandon Munoz (“Plaintiff”) will and hereby does move for
5 entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1)(2), of the
7 settlement between Plaintiff and Defendants Norman Window Fashions and Norman
8 International San Jose, LLC (“Defendants”) of the claims brought pursuant to the
9 Private Attorneys General Act of 2004 (“PAGA”), as set forth in the Settlement
10 Agreement and Release of Private Attorneys General Act Claims (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
12 Declaration of Edwin Aiwasian, including and not limited to, the plan of allocation
13 and distribution of the Total Settlement Consideration for payment of the LWDA
14 Payment to the California Labor and Workforce Development Agency (“LWDA”),
15 Individual Settlement Payments to the PAGA Settlement Members, Plaintiff’s
16 Counsel Payment to Plaintiff’s Counsel, Settlement Administration Costs to the
17 Settlement Administrator, and Service Award to Plaintiff;
- 18 2. Approving the PAGA Fund, estimated to be no less than \$243,477.09 which will be
19 distributed to the LWDA and the PAGA Settlement Members, pursuant to California
20 Labor Code section 2699(i), of which seventy-five percent (75%) will be paid to the
21 LWDA (“LWDA Payment”) and twenty-five percent (25%) will be paid to the PAGA
22 Settlement Members (“Individual Settlement Payments”);
- 23 3. Appointing Atticus Administration, LLC (“Atticus”) as the Settlement Administrator;
- 24 4. Directing Defendants to deposit the Total Settlement Consideration of \$450,000.00
25 into an account for administration of the Settlement, and directing the Settlement
26 Administrator to distribute the Total Settlement Consideration in accordance with the
27 Settlement Agreement;

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1 5. Directing the mailing of Individual Settlement Payment checks to the PAGA
2 Settlement Members along with the Cover Letter, which is substantially similar in
3 content and form to that attached as “**EXHIBIT 1**” to the [Proposed] Order and
4 Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code §
5 2698, *Et Seq.*) Settlement Agreement and Award of Plaintiff’s Counsel Payment,
6 Service Award, and Settlement Administration Costs (“[Proposed] Order and
7 Judgement”) filed concurrently herewith;

8 6. Awarding \$7,500.00 to Plaintiff Brandon Munoz as a Service Award;

9 7. Awarding up to \$15,000.00 to the Settlement Administrator as Settlement
10 Administration Costs; and

11 8. Awarding to Plaintiff’s Counsel, Lawyers *for* Justice, PC, \$171,000.00 as
12 compensation for reasonable attorneys’ fees and \$13,022.91 for reimbursement of
13 litigation costs and expenses (“Plaintiff’s Counsel Payment”), pursuant to California
14 Labor Code section 2699(g)(1).

15 The Settlement Agreement and moving and supporting papers for this motion are being
16 concurrently submitted to the California Labor and Workforce Development Agency in
17 conformity with California Labor Code section 2699(l)(2).

18 This motion is made pursuant to California Labor Code section 2699(l)(2), which
19 provides for review and approval by the Court of the settlement of a civil action filed pursuant to
20 PAGA, and Rule 3.1113(e) of the California Rules of Court, which permits the Court to extend
21 the page limit for memoranda.

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1 This motion will be based upon the following Memorandum of Points and Authorities,
2 the Settlement Agreement, the Declarations of Plaintiff's Counsel (Edwin Aiwazian) and
3 Plaintiff (Brandon Munoz) in support thereof, as well as the pleadings and other records on file
4 with the Court in this matter, and such evidence and oral argument as may be presented at the
5 hearing on this motion.

6 Dated: August 4, 2021

LAWYERS for JUSTICE, PC

7
8 By:

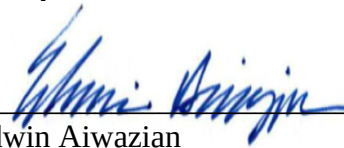

Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Brandon Munoz (“Plaintiff”) seeks approval of the Settlement Agreement and Release of Private Attorneys General Act Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into between Plaintiff, individually and on behalf of the State of California and other aggrieved employees, and Defendants Norman Window Fashions and Norman International San Jose, LLC (“Defendants”), pursuant to California Labor Code section 2699(l)(2).¹

Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to resolve the above-captioned action, brought pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for a Total Settlement Consideration of \$450,000.00.²

The Total Settlement Consideration is inclusive of: (1) Plaintiff’s Counsel Payment to be paid to Lawyers for Justice, PC (“Plaintiff’s Counsel”), (2) Service Award to Plaintiff, (3) Settlement Administration Costs to be paid to the Settlement Administrator, and (4) PAGA Fund to be paid to the Labor and Workforce Development Agency (“LWDA”) and all persons employed by Defendants as an hourly-paid or non-exempt employee in California at any time during the period from March 6, 2019 through March 30, 2021 (“PAGA Settlement Members”).³

The PAGA Fund will be the Total Settlement Consideration less the Court-approved Plaintiff’s Counsel Payment, Settlement Administration Costs, and Service Award, and is currently estimated to be no less than \$243,477.09.⁴ The PAGA Fund will be distributed as follows: seventy-five percent (75%) to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the PAGA Settlement Members (“Individual Settlement Payment”).⁵ Each PAGA Settlement Member will be entitled to payment on a *pro rata* basis, based on the number of pay

¹ The Settlement Agreement and Release of Private Attorneys General Act Claims (“Settlement Agreement”) is attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwasian.

² Settlement Agreement, § IV.A.23.

³ *Ibid.* See also, §§ I.9 & I.10.

⁴ *Id.*, §§ I.11, IV.E.30

⁵ *Id.*, §§ IV.E.31 & V.A.34.

periods worked by each PAGA Settlement Member in California during the PAGA Period.⁶ The “PAGA Period” is the period from March 6, 2019 through March 30, 2021.⁷

The payment to PAGA Settlement Members will be treated and reported for tax purposes as penalties and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.⁸

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness of the PAGA Fund (consisting of the LWDA Payment and Individual Settlement Payment), Plaintiff’s Counsel Payment, Settlement Administration Costs, and Service Award. Plaintiff respectfully requests that this Court approve the Settlement, award the Plaintiff’s Counsel Payment, Settlement Administration Costs, and Service Award and approve the LWDA Payment, which are provided for by the Settlement and requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant approval of the Settlement, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Defendants are in the business of designing, manufacturing, and assembling blinds and other window furnishings for customers globally and are headquartered in Santa Fe Springs and La Palma, California.

Prior to commencing this lawsuit, on March 6, 2020, as required by California Labor Code section 2699.3, Plaintiff Brandon Munoz provided the LWDA with written notice of his intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not

⁶ Settlement Agreement, §§ IV.E.31 & V.A.34(a)

⁷ *Id.*, § I.9.

⁸ *Id.*, § V.B.44.

1 respond.⁹

2 On May 14, 2020, Plaintiff Brandon Munoz filed a Complaint for Enforcement Under the
3 Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Complaint”) against
4 Defendants in the Los Angeles County Superior Court (“Court”), Case No. 20NWCV00279 (the
5 “Action”). Plaintiff’s core allegation is that Defendants have violated the California Labor Code
6 by engaging in a uniform practice and procedure, with respect to Plaintiff and other aggrieved
7 employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide
8 compliant meal and rest periods and associated premiums, failing to pay timely wages during
9 employment and upon termination of employment, failing to provide complete and accurate
10 itemized wage statements, failing to keep complete and accurate payroll records, and failing to
11 reimburse necessary business-related expenses and costs.

12 On August 3, 2020, Plaintiff propounded multiple sets of written discovery requests onto
13 Defendants, including, but not limited to, special interrogatories, form interrogatories, and
14 requests for production of documents. Plaintiff also noticed the depositions of Defendants’
15 person most knowledgeable designees regarding Defendants’ organizational structure and job
16 duties.

17 On August 13, 2020, Defendants filed an Answer to the Complaint. Defendants
18 maintained, and continue to maintain, that they had, and continue to have, legally-compliant
19 employment policies and practices throughout the time period at issue. Defendants deny that
20 they ever violated any provision of the California Labor Code, including, but not limited to,
21 those sections for which Plaintiff seeks penalties under the PAGA.

22 On December 30, 2020, the Parties participated in a full-day mediation conducted by
23 Anthony F. Pantoni, Esq. a well-respected mediator experienced in mediating complex labor and
24 employment matters. On December 30, 2020, the Parties were able to reach a settlement by way
25 of the mediator’s proposal. On February 9, 2021, the Parties filed a Joint Notice of Class Action
26 Settlement and Case Management Statement. On February 17, 2021, the Parties filed a
27

28 ⁹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 10.

Corrected Joint Notice of Settlement and Case Management Statement.

Plaintiff now moves for an order granting approval of the Settlement pursuant to California Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for this motion are being submitted to the LWDA in conformity with California Labor Code section 2699(l)(2), concurrently with this filing.¹⁰

III. SUMMARY OF THE SETTLEMENT TERMS

A. PAGA Settlement Members

The PAGA Settlement members who are covered by the Settlement are:

All persons employed by Defendants as an hourly paid or non-exempt employee in California at any time during the period from March 6, 2019, through March 30, 2021.¹¹

Based on information provided by Defendants as of August 2021, there are approximately one hundred seven (107) PAGA Settlement Members.¹²

B. Distribution of the Total Settlement Consideration

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Consideration of \$450,000.00.¹³ The PAGA Fund will be the Total Settlement Consideration less the following amounts: (1) Plaintiff's Counsel Payment consisting of attorneys' fees of up to \$171,000.00 and reimbursement of litigation costs and expenses of \$13,022.91 to Plaintiff's Counsel; (2) Service Award of \$7,500.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$15,000.00 to Atticus Administration, LLC ("Atticus" or "Settlement Administrator").¹⁴ The PAGA Fund will be fully distributed to the PAGA Settlement Members and the LWDA, as described in Section III.C, *infra*.

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¹⁰ The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

¹¹ Settlement Agreement, §§ I.9 & I.10. The period from March 6, 2019, through March 30, 2021 is referred to as the "PAGA Period." See *id.*, § I.9.

¹² Aiwasian Decl., ¶ 9.

¹³ *Id.*, ¶ 15.

¹⁴ *Ibid.*

Letter.²¹ For each Individual Settlement Payment that is returned as undeliverable, within five (5) calendar days, the Settlement Administrator will promptly attempt to locate an alternate, updated address for the PAGA Settlement Member at issue, by using the best technology accessible (e.g. skip tracing, address verification, etc.) and will attempt one (1) re-mailing of the Individual Settlement Payment along with Cover Letter.²²

Individual Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days and will thereafter be cancelled.²³ Funds associated with such cancelled checks will be distributed to Humanity First USA.²⁴

D. The Scope of the Release in the Settlement Agreement

As of the date of the Court's order granting approval of this Settlement Agreement, Plaintiff, the PAGA Settlement Members, and the State of California will be deemed to release and discharge Released Parties from the following claims:

Any and all claims, arising during the PAGA Period, whether they were pled or could have been pled based on the factual allegations in the Complaint under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, for civil penalties for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon discharge, failure to provide complaint wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses, in violation of California Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 510, 512, 551, 552, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802 and the applicable Industrial Welfare Commission Wage Orders.²⁵

The "Released Parties" are Nien Advanced Solutions dba Norman Window Fashions, Norman International San Jose, LLC, and Norman International Inc., and each and all of their current and former owners, officers, directors, managers, members, employees, agents, representatives, subsidiaries, parents, affiliates, predecessors, successors, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers.²⁶

²¹ Settlement Agreement, § V.B.40.

²² *Id.*, § V.B.41.

²³ *Id.*, § V.B.43.

²⁴ *Ibid.*

²⁵ *Id.*, § I.15.

²⁶ *Id.*, § I.16.

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

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

17 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
18 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v.*
19 *Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29
20 Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee
21 plaintiff but also on government agencies and any aggrieved employee not a party to the
22 proceeding” because “the employee plaintiff represents the same legal right and interest as state
23 labor law enforcement agencies[.]” “collateral estoppel applies [...] against those for whom the
24 party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring an
25 action on behalf of an individual or in the public interest, and a private person lacks an
26 independent right to bring the action, a person who is not a party but who is represented by the
27 agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86
28 (citations omitted).

As such, the Settlement is consistent with the law, and there is no requirement that the PAGA Settlement Members be provided with a mechanism to opt out of or object to the Settlement.

IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. See Cal. Lab. Code § 2699(a). Plaintiff has complied.

The settlement of a PAGA action requires court approval. See Cal. Lab. Code § 2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁷ See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto*

²⁷ Aiwazian Decl., ¶ 7.

1 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v.*
2 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal,*
3 *Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D.
4 Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27,
5 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576,
6 589.

7 In a PAGA case, the court's focus is not the monetary amount which aggrieved
8 employees or the State stand to receive, but instead, whether the total settlement amount achieves
9 the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to recover
10 civil penalties for the government that otherwise may not have been assessed and collected by
11 overburdened state enforcement agencies." See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at
12 *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to
13 "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers
14 and employees about their rights and responsibilities under this code, to be continuously
15 appropriated to supplement and not supplant the funding to the agency for those purposes." See
16 Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA
17 claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003
18 (stating that the PAGA is a mechanism for "an aggrieved employee to recover civil penalties—
19 for Labor Code violations—that otherwise would be sought by state labor law enforcement
20 agencies"); see also *Iskanian, supra*, at 381.

21 A PAGA settlement is a settlement of claims for penalties and other remedies which the
22 LWDA could assess and collect on behalf of employees without their involvement or approval.
23 "[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the
24 ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez, supra*, 2010 WL
25 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
26 action settlement, and the Court need not employ the two-step approval process that applies to a
27 class action settlement, under both state and federal law.

28 ///

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

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

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

The parties reached the Settlement through arm's-length negotiations, after a mediation with an experienced and respected mediator, Anthony F. Pantoni, Esq.²⁸ A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations with the assistance of an independent mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks associated with possible arbitration proceedings and of litigating these claims through trial.²⁹

After engaging in significant formal and informal discovery, the Parties participated in settlement negotiations to try to resolve the lawsuit.³⁰ These efforts included participating in formal mediation conducted by Anthony F. Pantoni, Esq. a well-respected mediator experienced in mediating complex labor and employment matters.³¹ During mediation, the Parties discussed all aspects of the case, including the risks and delays of further litigation, the risks to the Parties of proceeding with trial, possible arbitration proceedings, as well as the law relating to representative PAGA actions, off-the-clock theory, wage-and-hour enforcement, and arbitration agreements, the evidence produced and analyzed, and the possibility of bifurcation of discovery

²⁸ Aiwazian Decl., ¶ 12.

²⁹ *Id.*, ¶¶ 4-7, 12-14, & 17-21.

³⁰ *Id.*, ¶ 12.

³¹ *Ibid.*

1 and/or trial and appeals, among other things.³² During all settlement discussions, the Parties
2 conducted their negotiations at arm's length in an adversarial position.³³

3 Based on all of the information available to the Parties and with the assistance of the
4 experienced mediator, the Parties agree that this matter is well-suited for settlement given the
5 strengths and weaknesses of the PAGA claim.³⁴ Plaintiff and Plaintiff's Counsel believe that the
6 settlement is a fair, adequate, and reasonable resolution of this matter.³⁵ Plaintiff's Counsel has
7 extensive experience handling representative and class action wage-and-hour litigation and used
8 that experience to achieve a great result for Plaintiff, the State of California, and the PAGA
9 Settlement Members.³⁶ Therefore, the Court should give considerable weight to the competency,
10 experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the
11 settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988)
12 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd*
13 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs'
14 counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express*
15 *Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an
16 experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

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

25
26 ³² *Ibid.*

27 ³³ *Ibid.*

28 ³⁴ Aiwazian Decl., ¶ 21.

³⁵ *Id.*, ¶ 29.

³⁶ *Id.*, ¶¶ 4-7.

Plaintiff's core allegation is that Defendants have systematically violated the California Labor Code, with respect to Plaintiff and the PAGA Settlement Members, by, *inter alia*, failing to properly pay minimum, regular, overtime wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely pay wages during employment and upon termination of employment, failing to provide complete and accurate wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁷ some courts have also found that, for various reasons, the issues raised by Plaintiff raise individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.³⁸

³⁷ See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014, B242807) 2014 Cal.App. LEXIS 1102, *1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was 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 [employees] . . . the trial court may in fact find class analysis a more efficient and effective means of resolving plaintiffs' overtime claim"); *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment."); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (finding that real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for determination on behalf of a group of employees and that, "[r]eal parties' evidence supports the reasonable inference that [...] they could establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though a significant number of employees accrued them. Furthermore, in view of real parties' theory of restitution, those facts would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement implemented by section 226.7."); *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036 (holding that statistical evidence is admissible to support class action certification because it is also admissible to prove liability and damages across a group of employees, where the defendant employer had not kept records of time spent by employees with respect to donning and doffing protective clothing).

³⁸ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even where it has been alleged "that the employer consistently imposed a uniform policy or de facto practice" as to its employees, "the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably" and in litigating representative actions the procedures utilized by the court "may not be 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"); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest

(Footnote continued)

Defendants contended that courts have required, and that due process requires, that the adjudication of PAGA claims meets a “manageability” requirement. *See, e.g., Liuy v. Merrill Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-l4-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a multitude of individualized assessments would be necessary, making the PAGA claim unmanageable).

Defendants also maintained several defenses to Plaintiff’s theory of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendants maintained, and continue to maintain, that they had, and continue to have, legally-compliant employment policies and practices throughout the time period at issue.³⁹ Defendants deny that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.⁴⁰ Defendants further denied, and continue to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement.⁴¹

Defendants also challenged Plaintiff’s standing as an aggrieved employee and denied that any of Defendants’ other employees whom Plaintiff seeks to represent are aggrieved.⁴² Also, at the time that this case commenced, multiple courts had taken an approach requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. *See Amalgamated Transit Union, supra*, 46 Cal.4th at 1001 (noting that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially aggrieved employees and

breaks demonstrated that individualized inquiries were required to show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full] control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

³⁹ *Aiwazian Decl.*, ¶ 19.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶ 21.

1 noted that “PAGA’s public purpose would be ill-served if the court finds [the plaintiff] has not
2 been aggrieved by a Labor Code violation”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955
3 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money
4 on trial when litigation of issues could be rendered moot).

5 Defendants also argued that an important feature of PAGA is that the Court retains
6 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to
7 do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”
8 See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.*
9 (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA
10 penalties awarded to an employee based upon discretionary factors). Defendants maintained,
11 and continue to maintain, that they had and continue to have, legally-compliant employment
12 policies and practices throughout the time period at issue.⁴³ Defendants deny that they ever
13 violated any provision of the California Labor Code.⁴⁴ Even if, *arguendo*, such violations
14 occurred, which Defendants deny, Defendants contended that said violations would only be
15 considered “initial violations” and thus heightened “subsequent violation” penalties were not
16 warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163
17 Cal.App.4th 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor
18 Code provision [...], the employer cannot be presumed to be aware that its continuing
19 underpayment of employees is a ‘violation’ subject to penalties.”).

20 Defendants also contended that, with respect to PAGA claims, the Court was unlikely to
21 assess cumulative penalties for the maximum number of possible, separate California Labor
22 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially
23 where certain conduct may be regulated by multiple provisions of the California Labor Code that
24 are interrelated and work in tandem. As such, Defendants contended that cumulative penalties
25 and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

26 ///

27 ⁴³ Aiwazian Decl., ¶ 19.

28 ⁴⁴ *Ibid.*

1 While Plaintiff disagrees with Defendants' contentions and maintains that his PAGA
2 claim has merit, in reaching the settlement, Plaintiff and his counsel took into account the
3 strengths and weaknesses of each side's position and the uncertainty of how the case might have
4 concluded as litigation continued, at trial, in arbitration proceedings, and/or appeals.⁴⁵

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

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

11 Both sides used the pre-mediation time period to investigate the veracity, strength, and
12 scope of the PAGA claim.⁴⁶ Prior to mediation, Plaintiff's Counsel propounded multiple sets of
13 written discovery requests on Defendants, noticed the depositions of Defendants' person most
14 knowledgeable, reviewed Defendants' objections thereto, and prepared for and conducted
15 informal discovery and exchange of information.⁴⁷ In addition, the Parties exchanged a volume
16 of documents and data relevant to Plaintiff's claims and Defendants' defenses thereto, including,
17 and not limited to, the employment records of Plaintiff, sampling of employee time and pay data
18 (such as Earning Statements), Defendants' Employee Handbook, various agreements and
19 acknowledgments (such as Defendants' Acknowledgement of Receipt of Employee Handbook
20 and Arbitration Agreement), and Defendants' operations and employment policies, practices, and
21 procedures (such as, Work Hours, Rest and Meal Breaks, and Overtime and Overtime Pay)
22 among other documents.⁴⁸ Counsel for the Parties undertook significant investigation, and also
23 invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff's
24 claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁴⁹

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26 ⁴⁵ Aiwazian Decl., ¶ 22.

27 ⁴⁶ *Id.*, ¶ 13.

28 ⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 13 & 22.

⁴⁹ *Ibid.*

Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendants' counsel regarding the pleadings, discovery, mediation, and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending court proceedings, the mediation, and settlement negotiations.

Had the case not settled, the Parties would have conducted additional extensive formal discovery, including propounding additional written discovery requests as well as multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendants indicated that they would aggressively litigate this case.⁵⁰ Even if Defendants failed on their defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.⁵¹ Additionally, there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State of California or other PAGA Settlement Members after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. The Settlement Is Fair, Adequate, and Reasonable

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

The Settlement provides significant benefits to the State of California and the PAGA Settlement Members and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendants have agreed to pay a Total Settlement Consideration of \$450,000.00, which encompasses the PAGA Fund, Plaintiff's Counsel

⁵⁰ Aiwazian Decl., ¶ 19.

⁵¹ *Id.*, ¶¶ 11, 12, 20 & 22.

1 Payment, Settlement Administration Costs, and Service Award.⁵² Subject to approval by the
2 Court, the following amounts will be subtracted from the Total Settlement Consideration to yield
3 the PAGA Fund: (1) Plaintiff's Counsel Payment consisting of attorneys' fees in the amount of
4 \$171,000.00 and reimbursement of litigation costs and expenses in the amount of \$13,022.91 to
5 Plaintiff's Counsel⁵³; (2) the Settlement Administration Costs of up to \$15,000.00; and (3)
6 Service Award of up to \$7,500.00 to Plaintiff.⁵⁴

7 The PAGA Fund is currently estimated to be \$243,477.09, of which an estimated
8 \$60,869.27 is to be distributed to PAGA Settlement Members on a *pro rata* basis, based on their
9 proportionate share of the pay periods worked by PAGA Settlement Members in California
10 during the PAGA Period and \$182,607.82 is to be distributed to the LWDA. There is no reason
11 to doubt the fairness of the proposed plan of allocation of the PAGA Fund as it fully complies
12 with California Labor Code section 2699(i).

13 The Settlement is a compromise of highly disputed claims. Plaintiff and his counsel
14 recognize the expense and length of continued proceedings necessary to litigate the matter
15 through trial and any possible appeals.⁵⁵ Plaintiff and his counsel have also taken into account
16 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
17 inherent in such litigation.⁵⁶ Plaintiff and his counsel are also aware of the burdens of proof
18 necessary to establish liability, both generally and in response to Defendants' defenses thereto,
19 and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on
20 behalf of Plaintiff, the State of California, and other PAGA Settlement Members.⁵⁷ Plaintiff and
21 his counsel have also taken into account Defendants' agreement to enter into a settlement that
22 confers significant relief upon the PAGA Settlement Members and the State of California.⁵⁸

23 ⁵² Settlement Agreement, § IV.A.23.

24 ⁵³ *Id.*, ¶ IV.B.24. Although the Settlement Agreement provides that Plaintiff's Counsel can seek up to \$25,000.00 for
25 reimbursement of litigation costs and expenses, Plaintiff's Counsel only seeks the amount of \$13,022.91 for this
26 payment, which is less than \$25,000.00. The difference between the amount sought and the maximum allocated
27 amount available under the settlement (i.e., the difference of \$11,977.09), will be a part of the PAGA Fund.

26 ⁵⁴ Settlement Agreement, §§ IV.B.24, IV.B.25, IV.C.27, & IV.D.29.

27 ⁵⁵ Aiwazian Decl., ¶¶ 11, 12 & 22.

27 ⁵⁶ *Id.*, ¶¶ 12, 18 & 22.

27 ⁵⁷ *Id.*, ¶¶ 17 & 18.

28 ⁵⁸ *Id.*, ¶ 22.

1 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
2 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it
3 is in the best interests of the PAGA Settlement Members and the State of California.⁵⁹

4 The result achieved in this case, and the monetary recovery provided by this settlement,
5 are well-within the range of an acceptable settlement under the circumstances, especially when
6 compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and Hour*
7 *Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount of
8 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL
9 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of
10 PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out
11 of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
12 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims);
13 *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
14 toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no
15 abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the
16 settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained for
17 settlement of the PAGA claims is significant, and it will be distributed in accordance with and in
18 fulfillment of the objectives of the PAGA statute.

19 **E. The Experience and Views of Plaintiff's Counsel Favor Approval of the**
20 **Settlement**

21 Plaintiff's Counsel is highly experienced in complex representative and class action
22 wage-and-hour litigation.⁶⁰ In the view of Plaintiff's Counsel, the benefits conferred by the
23 settlement are eminently fair and reasonable, and in the best interests of the State of California
24 and the PAGA Settlement Members in light of the risk, delay, and uncertainty of continued
25 litigation and the substantial monetary benefits provided for by the Settlement.⁶¹ Furthermore,
26

27 ⁵⁹ Aiwazian Decl., ¶ 29.

28 ⁶⁰ *Id.*, ¶¶ 4-7.

⁶¹ *Id.*, ¶ 29.

courts have acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

The Settlement provides for a Total Settlement Consideration of \$450,000.00.⁶² The Settlement provides for attorneys’ fees in an amount of up to thirty-eight percent (38%) of the Total Settlement Consideration, which is \$171,000.00, subject to approval and award by the Court.⁶³ The requested attorneys’ fees award is commensurate with: (1) the risk that Plaintiff’s Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that Plaintiff’s Counsel has shown, (4) the results that Plaintiff’s Counsel has achieved throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for Plaintiff, the PAGA Settlement Members, and the State of California, and (6) the other cases that Plaintiff’s Counsel has turned down in order to devote time and effort to this matter.

Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) (“Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney’s fees and costs”). Plaintiff’s Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of others and secures monetary recovery for a large number of Aggrieved Employees, as well as the State of California. *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the “significant benefit,” “public interest,” and “large class of persons” requirements of Code of Civil Procedure

⁶² Settlement Agreement, § IV.A.23.

⁶³ *Id.*, § IV.

section 1021.5, regardless of plaintiff’s personal motivation). The settlement will also benefit the state labor agency in enforcing labor laws and educating “employers and employees about their rights and responsibilities under [the California Labor Code].” Cal. Lab. Code § 2699(i).

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

Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

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

The percentage method is particularly appropriate where a monetary settlement has been recovered and “the benefit [recovered can be] easily quantified.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable

percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808.

The percentage fee method is preferred in representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. California law provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47-50; *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay the plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32. Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270).

Plaintiff’s Counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the case. *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million total settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found the range of contingency fees in marketplace to be 20 to 40 percent and determined such a percentage fee was

appropriate); *see also, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles County Superior Court, Case No. BC596892 (June 2016) (citing *Chavez, supra*, 162 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the settlement amount of \$950,000, in a PAGA action, because it was “reasonable and consistent with fee awards in class action cases”).

Plaintiff’s Counsel has litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.⁶⁴ Plaintiff’s Counsel propounded written discovery requests on Defendants, noticed the depositions of Defendants’ person most knowledgeable designees regarding job duties and organizational structure of Defendants and reviewed Defendants’ objections thereto, and conducted informal discovery and exchange of information with Defendants’ counsel.⁶⁵ The data and documents reviewed and analyzed by Plaintiff’s Counsel included, and was not limited to, the employment records of Plaintiff, sampling of employee time and pay data (such as Earning Statements), Defendants’ Employee Handbook, various agreements and acknowledgments (such as Defendants’ Acknowledgement of Receipt of Employee Handbook and Arbitration Agreement), and Defendants’ operations and employment policies, practices, and procedures (such as, Work Hours, Rest and Meal Breaks, and Overtime and Overtime Pay) among other documents.⁶⁶ Counsel for the Parties undertook significant investigation, and also invested time reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims, including, and not limited to, calculating the potential monetary recovery under PAGA.⁶⁷ Other work performed by Plaintiff’s Counsel included, but was not limited to: meeting and conferring with Defendants’ counsel regarding the pleadings, discovery, mediation, and settlement, among other issues; participating in case strategy and analysis; drafting, reviewing, and revising the mediation brief; and preparing for and attending court proceedings, mediation, and settlement negotiations.⁶⁸

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⁶⁴ Aiwazian Decl., ¶ 27.

⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

1 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
2 and will not receive any compensation until recovery is obtained.⁶⁹ Plaintiff's Counsel is
3 experienced in complex wage-and-hour litigation and used that experience to obtain a great
4 result for Plaintiff, the PAGA Settlement Members and the State of California.⁷⁰ Considering the
5 amount of fees requested, work performed, risks incurred, results obtained, and experience of
6 Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys'
7 fees are reasonable and should be awarded.

8 **B. The Fee Award Requested by Plaintiff's Counsel Is Reasonable Based on the**
9 **Factors Considered in Determination of Fee Awards**

10 The factors which courts consider in determining whether fee awards are reasonable, all
11 of which support the fee award requested by Plaintiff's Counsel, are: (1) the time and labor
12 required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
13 perform the legal services properly; (4) the preclusion of other employment by the attorney due
14 to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
15 (7) the time limitation imposed by the client or the circumstances; (8) the amount involved and
16 results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability
17 of the case; (11) the nature and length of the professional relationship with the client; and (12)
18 awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991)
19 946 F. 2d 768, 772. Some of the most relevant factors to this Court's fee determination will be
20 addressed below.

21 It should be highlighted that the percentage award sought is commensurate with the time,
22 effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's
23 representation and the risks taken in commencing the Action, the skill and determination
24 required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that
25 Plaintiff's Counsel has obtained on behalf of Plaintiff, the PAGA Settlement Members, and the
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27 ⁶⁹ Aiwazian Decl., ¶ 27.

28 ⁷⁰ *Id.*, ¶¶ 4-7.

State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of thirty-eight percent (38%) of the Total Settlement Consideration is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit, Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁷¹ During the litigation of the Action, Plaintiff's Counsel interviewed and obtained information from Plaintiff and PAGA Settlement Members, conducted significant formal and informal discovery, noticed the depositions of Defendants' person most knowledgeable witnesses, conducted legal research, reviewed and analyzed a volume of documents and data, prepared for and attended hearings and mediation, evaluated the PAGA claims, and calculated the potential monetary recovery under PAGA.⁷² Plaintiff's Counsel also met and conferred with Defendants' counsel over issues relating to the pleadings, discovery, mediation, and settlement.⁷³ Plaintiff's Counsel performed other work including, *inter alia*, case strategy and analysis; drafting, reviewing, and revising pleadings; and engaging in extensive settlement negotiations.⁷⁴

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency, and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 2**" to the accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Plaintiff's Counsel has spent performing tasks in this matter. Plaintiff's Counsel has spent **246.80 hours** to obtain a recovery on behalf of Plaintiff, the PAGA Settlement Members, and the State of California. These hours were required to bring the case to its successful conclusion.

In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

⁷¹ Aiwazian Decl., ¶ 13.

⁷² *Ibis*.

⁷³ *Ibid*.

⁷⁴ *Ibid*.

1 **2. The Skill Required to Perform Legal Services Properly**

2 The skill required to properly litigate this case is evident not only in the results achieved,
3 but in the steps necessary to reach the same. Defendants retained highly-respected counsel to
4 represent its defenses. Defendants and their counsel felt very strongly about Defendants' ability
5 to prevail on the merits and avoid representative adjudication of the PAGA claims. Plaintiff and
6 Plaintiff's Counsel believe that the PAGA claims have merit and that Plaintiff will prevail at
7 trial. Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing
8 the lawsuit and during the litigation. Plaintiff's Counsel took steps to prepare the case for trial
9 and had every intention of taking the case to trial if Defendants did not offer an appropriate
10 settlement.

11 Plaintiff's Counsel's effort and skill were used to, among other things, investigate the
12 allegations and gather facts, research the legal issues, analyze data and information obtained
13 from Defendants, Plaintiff, and through other sources, evaluate the PAGA claims, and negotiate
14 the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used
15 their extensive experience and skill in the handling of complex wage-and-hour matters to
16 advocate for and obtain PAGA Settlement Members and the State of California a recovery now,
17 with maximum efficiency, as opposed to the possibility of recovery in the future, after significant
18 expense and time.⁷⁵

19 **3. The Value of the Settlement**

20 The Settlement represents an excellent resolution of this lawsuit, given the uncertainty
21 and risks of further litigation.⁷⁶ Had the case not settled, Defendants would have vigorously
22 challenged manageability and liability, and sought a reduction in the amount assessed as
23 penalties. Defendants, however, faced risks too, including and not limited to, the risk of having
24 the Court assess penalties. Additionally, preparing the case for trial would have been
25 extraordinarily expensive for the Parties.

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27 ⁷⁵ Aiwazian Decl., ¶¶ 16-21.

28 ⁷⁶ *Id.*, ¶¶ 17, 18, 22, & 29.

At this stage, the settlement is preferred over continued litigation because such resolution saves time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, and appellate review of those proceedings. The Settlement offers present and considerable monetary relief to Plaintiff, the PAGA Settlement Members, and the State of California while avoiding additional expense, risk, and delay in obtaining possible further recovery.

4. Whether the Fee Is Fixed or Contingent

The representation provided by Plaintiff's Counsel has been wholly contingent and Plaintiff's Counsel took on this matter without knowing whether any recovery would be obtained. Plaintiff's Counsel has invested **246.80 hours** of time to obtain relief on behalf of Plaintiff, the PAGA Settlement Members, and the State of California. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses in the amount of \$13,022.91.⁷⁷

In this case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁸ If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel is well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiff, the PAGA Settlement Members, and the State of California.⁷⁹ The skill and determination that Plaintiff's Counsel has shown throughout the Action justify the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

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⁷⁷ Aiwazian Decl., ¶ 27 and Exh. 3.

⁷⁸ *Id.*, ¶ 27.

⁷⁹ See Aiwazian Decl., ¶¶ 4-7.

1 **5. The Amount Involved and the Results Achieved**

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this case, are considerable. Here, the results achieved, and the recovery
4 obtained on behalf of Plaintiff, the PAGA Settlement Members, and the State of California
5 represent a fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have
6 resulted in a settlement that provides for a Total Settlement Consideration of \$450,000.00, and it
7 is currently estimated that the PAGA Fund available for distribution to the PAGA Settlement
8 Members and the State of California, as set forth in Part III.C *infra*, is approximately
9 \$243,477.09.⁸⁰

10 **6. The Reputation and Ability of the Attorneys**

11 Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its
12 attorneys employed their knowledge, skill, and experience to bring the case to a successful
13 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
14 experience, has recovered millions of dollars on behalf of thousands of individuals in California,
15 and has successfully handled numerous significant wage-and-hour class action and representative
16 action cases.⁸¹

17 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees,**
18 **Because Plaintiff's Counsel Has Performed Work That Is of Significant**
19 **Value Based on Reasonable Hours and Prevailing Hourly Rates of**
20 **Compensation**

21 While the percentage-of-the-benefit approach is endorsed as the better approximation of
22 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
23 method to "cross-check" the results of the other. *See Laffitte, supra*, 1 Cal.5th at 505 (explaining
24 that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
25 spent by counsel into the trial court's reasonableness determination"); *see also, e.g., Vizcaino*,
26 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method,

27 ⁸⁰ Settlement Agreement, § IV.A.23.

28 ⁸¹ Aiwasian Decl., ¶¶ 4-7.

1 the lodestar may provide a useful perspective on the reasonableness of a given percentage
2 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
3 determination of the fee as a percentage” and “does not impose an absolute maximum or
4 minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

5 The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates
6 for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is
7 entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

8 **1. Plaintiff’s Counsel Performed Work for a Reasonable Number of Hours**

9 The reasonableness of hours is assessed by “the entire course of the litigation, including
10 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*
11 *Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

12 As discussed above, this case was highly contested and required a significant amount of
13 time and labor. Defendants made it clear very early on that they disputed all of Plaintiff’s
14 allegations and disputed that representative adjudication was appropriate. Defendants also
15 argued, *inter alia*, that they had facially-compliant employment policies and practices throughout
16 the time period at issue.⁸² Defendants raised affirmative defenses and denied liability, and the
17 pursuit of this case involved gathering and analyzing data from Defendants as well as other
18 sources.⁸³ The handling of this litigation involved a great amount of effort, and also required and
19 involved the exercise of a high level of skill, which Plaintiff’s Counsel has, as a result of its
20 extensive experience in complex wage-and-hour litigation. Long and difficult battles would
21 have followed as the case moved toward trial, including taking and defending declarant and
22 expert depositions, depositions of person most knowledgeable designees, conducting additional
23 formal discovery, and engaging in extensive motion practice. As Plaintiff’s Counsel geared up
24 for these battles, Plaintiff’s Counsel undertook intense preparation in an attempt to resolve the
25 entire matter through settlement negotiations.

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27 ⁸² Aiwazian Decl., ¶ 19.

28 ⁸³ *Id.*, ¶¶ 13 & 22.

Plaintiff's Counsel had to bring together a volume of data and documents that were produced by Defendants and obtained from Plaintiff, PAGA Settlement Members, and through other sources. Plaintiff's Counsel conducted extensive review and analysis of these documents and data to strategize and evaluate the case and engage in settlement discussions.

As set forth above in Part VI.B.1 *supra*, attached to the Declaration of Edwin Aiwazian is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel performed in this matter, and the time required for completing those tasks.⁸⁴ The chart demonstrates that Plaintiff's Counsel has spent a total of **246.80 hours** on this matter. In light of the facts and circumstances of this case, as well as the results Plaintiff's Counsel has achieved on behalf of Plaintiff, the PAGA Settlement Members, and the State of California, Plaintiff's Counsel has spent a reasonable number of hours on this matter.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this matter. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See id.*

Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the commencement of the Action and all the way up to approval of the settlement, and their dedication to the representation of Plaintiff, the PAGA Settlement Members, and the State of California has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching a settlement of \$450,000.00.

⁸⁴ *Id.*, Exh. 2.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable hourly rate of compensation of at least \$700 per hour for services provided by Plaintiff's Counsel.⁸⁵ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$700 for legal services performed, by courts of this state.⁸⁶ While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

The lodestar method, as a cross-check to the percentage fee sought, strongly supports the reasonableness of the requested attorneys' fees award. Applying the rate of \$700 per hour to 246.80 hours worked by Plaintiff's Counsel, would place a base lodestar value of \$172,760.00 on the services provided by Plaintiff's Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of \$171,000.00 (equal to 38% of the Total Settlement Consideration based on the Settlement Agreement).

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by

⁸⁵ Aiwarzian Decl., ¶ 26.

⁸⁶ For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64. Aiwarzian Decl., ¶ 26.

1 paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*,
2 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves
3 to bring the financial incentives for enforcing important rights “into line with incentives [attorneys]
4 have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th
5 at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g.,
6 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without
7 remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even
8 higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a
9 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5
10 multiplier in a consumer class action).

11 The lodestar method as a cross-check to the percentage figure sought strongly supports the
12 reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that
13 the Court approve and grant an attorneys’ fees award in the amount of \$171,000.00 to Plaintiff’s
14 Counsel, which is reasonable and justified on a percentage-basis, but also based on a lodestar
15 cross-check.

16 **VII. COSTS TO BE REIMBURSED TO PLAINTIFF’S COUNSEL ARE FAIR AND**
17 **REASONABLE, AND SHOULD BE APPROVED**

18 The Settlement provides for reimbursement of litigation costs and expenses of up to
19 \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Plaintiff’s Counsel has incurred
20 a total of \$13,022.91 in litigation costs and expenses.⁸⁷ This amount was reasonable and
21 necessary in the prosecution of this matter, and is less than the maximum amount allocated under
22 the Settlement Agreement.⁸⁸ The cost savings of \$11,977.09 will be part of the Total Settlement
23 Consideration.⁸⁹ Accordingly, Plaintiff’s Counsel requests that the Court award reimbursement
24 of litigation costs and expenses in the amount of \$13,022.91 to Plaintiff’s Counsel.

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27 ⁸⁷ Aiwazian Decl., ¶ 27.

28 ⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

**VIII. THE PROPOSED COVER LETTER TO THE PAGA SETTLEMENT MEMBERS
SHOULD BE APPROVED**

Although PAGA does not require notice to unnamed aggrieved employees of a settlement, the Parties prepared, and now present for the Court's consideration and approval, the Cover Letter for transmission to the PAGA Settlement Members along with their Individual Settlement Payment checks, substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order and Judgment. The Cover Letter informs the PAGA Settlement Members about the Action and the Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the Cover Letter for transmission to the PAGA Settlement Members at the time of disbursing their Individual Settlement Payments.

**IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND
REASONABLE, AND SHOULD BE APPROVED**

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Atticus to handle the administration of the Settlement. The fees and expenses of the Settlement Administrator are estimated not to exceed \$15,000.00. These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual Settlement Payment checks to the PAGA Settlement Members; performing skip-trace searches; re-mailing the returned Individual Settlement Payments to any updated addresses located; and handling inquiries from PAGA Settlement Members regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to \$15,000.00 to Atticus, a necessary third-party for handling the settlement process.

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X. THE PROPOSED SERVICE AWARD IS FAIR, ADEQUATE, AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for a Service Award to be paid to Plaintiff in the amount of \$7,500.00.⁹⁰ The purpose of such an award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC* (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce 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 Superior Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA action).

Here, Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other PAGA Settlement Members. Plaintiff gathered and produced relevant documents and information, provided the facts and evidence necessary to attempt to prove the allegations, and discussed his employment with his counsel.⁹¹ Plaintiff was available whenever his counsel needed him and tried to obtain documents and information that would aid in the litigation of the PAGA claims and pursuit of recovery on behalf of the State of California and PAGA Settlement Members.⁹² Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release of claims than the release of claims that applies to the PAGA Settlement Members.

Accordingly, it is reasonable and just for Plaintiff to receive a Service Award in the amount of \$7,500.00, in addition to the Individual Settlement Payment he will receive as a

⁹⁰ Settlement Agreement, § IV.D.29.

⁹¹ Aiwazian Decl., ¶ 28; Declaration of Brandon Munoz (“Munoz Decl.”), ¶¶ 3-4.

⁹² Aiwazian Decl., ¶ 28; Munoz Decl., ¶¶ 3-5.

PAGA Settlement Member.

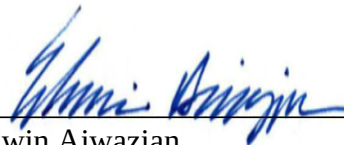
XI. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Total Settlement Consideration for the LWDA Payment to the LWDA, Individual Settlement Payments to the PAGA Settlement Members, Plaintiff's Counsel Payment to Plaintiff's Counsel, Settlement Administration Costs to the Settlement Administrator, and Service Award to Plaintiff, and permit the filing of a memorandum that exceeds the page limit.

Dated: August 4, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiff