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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

RANCHO FOODS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20NWCV00359

Honorable Olivia Rosales
Department C

**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 AWARD;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

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

[Reservation ID: 403461476116]

Hearing Date: June 9, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Department C

Complaint Filed: June 25, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 9, 2021, at 1:30 p.m., or as soon as thereafter as
2 the matter may be heard before the Honorable Olivia Rosales in Department C of the Norwalk
3 Courthouse of the Superior Court of the State of California for the County of Los Angeles,
4 located at 12720 Norwalk Blvd., Norwalk, California 90650, Plaintiff Luis Pelayo ("Plaintiff")
5 will and hereby does move for entry of the following orders:

- 6 1. Granting approval, pursuant to California Labor Code section 2699(1), of the proposed
7 settlement between Plaintiff and Defendant Rancho Foods, Inc. ("Defendant") of the
8 claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA") as set
9 forth in the Parties' Settlement Agreement and Release ("Settlement Agreement,
10 "Settlement," or "Agreement"), attached as "**EXHIBIT B**" to the Declaration of
11 Douglas Han;
- 12 2. Approving the PAGA Penalties Fund available for payment for PAGA penalties,
13 which is estimated to be \$189,249.76, seventy-five percent (75%) of which
14 (\$141,937.32) will be paid to the California Labor and Workforce Development
15 Agency ("LWDA") ("LWDA Payment") and twenty-five percent (25%) of which
16 (\$47,312.44) will be paid to the Settlement Group ("Individual Settlement Awards");
- 17 3. Directing Defendant to transfer the Gross Settlement Amount to the Settlement
18 Administrator via wire transfer in accordance to the Settlement Agreement;
- 19 4. Directing the mailing the Individual Settlement Awards accompanied by an
20 explanatory letter substantially to Settlement Group Members;
- 21 5. Awarding \$10,000 to Plaintiff as an enhancement award; and
- 22 6. Awarding to Plaintiff's Counsel, Justice Law Corporation an Attorneys' Fees Award
23 in the amount of \$133,000 as compensation for reasonable attorneys' fees and a
24 Litigation Costs Award in the amount of \$11,250.24 for reimbursement of litigation
25 costs and expenses incurred in litigating the PAGA claim pursuant to Labor Code
26 section 2699(g)(1) and California Code of Civil Procedure § 1021.5;

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

6
7 Dated: May 11, 2021

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(l)(2), Plaintiff seek approval of the Private Attorneys
4 General Act (Cal. Lab. Code § 2698, *et seq.*) Settlement Agreement entered into by and between
5 Plaintiff, on behalf of himself, and all current and former non-exempt employees of Defendant
6 during the period from April 20, 2019 through March 3, 2021 (“Settlement Group,” “Settlement
7 Group Members,” and “Settlement Period”).¹

8 Subject to Court approval, Plaintiff and Defendant have agreed to resolve the Lawsuit,
9 brought pursuant to the PAGA for a Gross Settlement Amount of \$350,000.²

10 The Gross Settlement Amount is inclusive of: (1) the amount allocated for the LWDA
11 Payment that will be distributed in accordance with Labor Code section 2699(i); (2) the
12 Attorneys’ Fees Award and the Litigation Costs Award to Plaintiff’s Counsel, Justice Law
13 Corporation, pursuant to Labor Code section 2699(g)(1); (3) the enhancement award to Plaintiff;
14 and (4) the Administration Costs.³

15 The PAGA Penalties Fund shall be the Gross Settlement Amount less the Court-approved
16 Attorneys’ Fees Award, the Litigation Costs Award, the enhancement award, and Administration
17 Costs, and is currently estimated to be \$189,249.76.⁴ Seventy-five percent (75%) of the PAGA
18 Penalties Fund will be paid to the LWDA (\$141,937.32), and twenty-five percent (25%) will be
19 paid to the Settlement Group (\$47,312.44) pursuant to Labor Code section 2699(i).⁵ Each
20 Settlement Group Member will receive an Individual Settlement Award proportionate to the
21 number of pay periods he or she worked at Defendant in California during the Settlement Period
22 relative to the entire Settlement Group.⁶

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25 _____
26 ¹ The Settlement Agreement is attached as “**EXHIBIT B**” to the Declaration of Douglas Han (“Settlement Agreement”),
at ¶ 5(a)(b).

27 ² *Id.*, at ¶ 7(a).

³ *Id.*, at ¶ 7(b)(i)-(iv).

⁴ *Id.*, at ¶ 7(b)(iv).

⁵ *Id.*, ¶ 7(b)(iv)(A)(B).

⁶ *Id.*, ¶ 7(b)(iv)(B)(1)(2).

1 Plaintiff submits that the proposed Settlement is fair, adequate, and reasonable, and meets
2 the requirements for Court approval based upon the relevant fairness factors, the relative strengths
3 of the PAGA claim and range of outcomes in the litigation, the risk, expense, and complexity of
4 further litigation, the benefit conferred by the proposed Settlement, the scope of the release, the
5 experience and views of counsel, and the reasonableness of the Attorneys' Fees Award, Litigation
6 Costs Award, the enhancement award, and the Administration Costs. Plaintiff respectfully
7 requests that this Court approve the Settlement and award the Attorneys' Fees Award, Litigation
8 Costs Award, the enhancement award, and the Administration Costs, which are provided by the
9 Settlement and requested herein.

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

11 As a wholesale food distributor, Defendant provides products such as beef, pork, poultry,
12 seafood, lamp and deli products (i.e., deli meats and cheeses) in bulk quantities to various food
13 service providers throughout California. Plaintiff is a former employee of Defendant who worked
14 as a warehouse order picker from approximately April 2018 to August 2019.

15 On or about April 20, 2020, Plaintiff served a notice letter to the LWDA and Defendant,
16 pursuant to Labor Code Section 2699.3, to notify the LWDA of alleged Labor Code violations.
17 The LWDA did not respond to Plaintiff's correspondence.

18 On or about June 25, 2020, Plaintiff filed the Lawsuit via a Complaint for Civil Penalties
19 under PAGA. Plaintiff sought, on behalf of the State of California, to represent himself and all
20 Settlement Group Members. On or about November 6, 2020, Defendant filed an Answer
21 containing a general denial of all material allegations in the Complaint.

22 Plaintiff's core allegation is that Defendant has systematically violated the Labor Code,
23 with respect to Plaintiff and non-exempt employees by, *inter alia*, by failing to properly
24 compensate minimum and overtime wages, failing to provide compliant meal and rest breaks and
25 associated premium pay, failing to timely pay wages, failing to provide compliant wage
26 statements, and failing to reimburse employees for necessary business expenses.

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1 On March 3, 2021, the Parties participated in a full day of private mediation conducted by
2 Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex employment
3 matters.⁷ Under the auspices of the mediator, the Parties were able to reach a settlement.⁸

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

6 **III. SUMMARY OF THE SETTLEMENT TERMS**

7 **A. Settlement Group Members**

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

9 All cover all current and former non-exempt employees of Defendant during the period
10 from April 20, 2019 through March 3, 2021.⁹

11 Based on information provided by Defendant, there are approximately thirteen thousand two
12 hundred ninety-seven (13,297) pay periods.¹⁰

13 **B. Distribution of the Gross Settlement Amount**

14 Under the terms of the proposed Settlement, Defendant will pay a Gross Settlement
15 Amount of \$350,000.¹¹ The PAGA Penalties Fund will be the Gross Settlement Amount, less the
16 following amounts: (1) the Attorneys' Fees Award of up to \$133,000 to Plaintiff's Counsel; (2)
17 the Litigation Costs Award in the amount of \$11,250.24 to Plaintiff's Counsel; (3) the
18 enhancement award of up to \$10,000 to Plaintiff; and (4) the Administration Costs currently
19 estimated at \$6,500.¹² Twenty-five percent (25%) of the PAGA Penalties Fund will be distributed
20 to the Settlement Group proportionate to the number of pay periods he or she worked at
21 Defendant in California during the Settlement Period relative to the entire Settlement Group, and
22 the remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the
23 LWDA, pursuant to Labor Code section 2699(i).¹³ No portion of the Gross Settlement Amount
24 will revert to Defendant.

25 _____
26 ⁷ Declaration of Douglas Han ("Han Dec."), at ¶ 15.

27 ⁸ *Id.* at ¶ 16.

28 ⁹ Settlement Agreement, at ¶ 5(a)(b).

¹⁰ Han Dec., at ¶ 10

¹¹ Settlement Agreement, at ¶ 7(a).

¹² *Id.*, at ¶ 7(b)(i)-(iv).

¹³ *Id.*, at ¶ 7(b)(iv)(A)(B).

1 **C. Distribution of the PAGA Penalties Fund**

2 Within twenty (20) calendar days of the Effective Date of the Agreement, Defendant will
3 provide the Settlement Administrator the entire \$350,000 Gross Settlement Amount.¹⁴
4 Afterwards, within fourteen (14) calendar days of the funding of the Settlement, the Settlement
5 Administrator will issue the payments required by Section 7 of the Agreement to the appropriate
6 entities or persons.¹⁵

7 Individual Settlement Awards will be paid in the form of a check delivered to each
8 Settlement Group Member at the last known address on file with Defendant or as updated by the
9 Settlement Administrator. Each Individual Settlement Award will also be accompanied by an
10 explanatory letter.¹⁶ Any Individual Settlement Award checks that are not cashed, deposited, or
11 negotiated within one hundred twenty (120) days after the date of their issuance (“Check Stale
12 Date”) will be void and the amount of those checks will be directed to the California State
13 Controller for the deposit in the Unclaimed Property Fund in the name of the employee.¹⁷

14 Any checks to the Settlement Group that are returned as undeliverable on or before the
15 Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding
16 address affixed thereto. If no forwarding address is provided, the Settlement Administrator will
17 promptly attempt to determine the correct address using a skip trace or other reasonable method
18 and will then perform a single remailing.¹⁸

19 The PAGA Penalties Fund is currently estimated to be \$189,249.76.¹⁹ In conformity with
20 the PAGA statute, seventy-five percent (75%) of the PAGA Penalties Fund shall be distributed to
21 the LWDA as its share of the Settlement attributable to civil penalties under Labor Code Section
22 2699(i), and the remaining twenty-five percent (25%) will be paid to the Settlement Group
23 proportionate to the number of pay periods he or she worked at Defendant in California during the
24 Settlement Period relative to the entire Settlement Group.²⁰

25 ¹⁴ Settlement Agreement, ¶ 8(a)(i).

26 ¹⁵ *Id.*, ¶ 8(b).

27 ¹⁶ *Id.*, ¶ 8(c)(i).

28 ¹⁷ *Id.*, ¶ 8(c)(ii).

¹⁸ *Id.*, at ¶ 8(c)(iii).

¹⁹ Han Dec., at ¶ 17

²⁰ Settlement Agreement, at ¶ 7(b)(iv)(A)(B)(1)(2).

1 Individual Settlement Awards shall be deemed to consist entirely of civil penalties
2 recovered under PAGA and subject to treatment as IRS Form 1099 income. Accordingly, an IRS
3 Form 1099 will be issued to each Settlement Group Member in connection with his or her
4 Individual Settlement Award if it is \$600 or more.²¹

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

6 The “Released Parties” are Defendant each and all of Defendant’s past, present, and future
7 parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions,
8 affiliates, affiliated entities, related entities, and assigns; the past, present, and future shareholders,
9 owners, officers, directors, board members, employees, agents, trustees, attorneys or legal
10 representatives, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees,
11 partners, and members of the foregoing; and/or any other entity or individual which could be
12 liable for the acts or omissions of Defendant (“Released Parties”).²²

13 Upon the Effective Date, this settlement forever bars Plaintiff, the LWDA, and any other
14 representative, proxy, or agent thereof, including, but not limited to, any and all allegedly
15 aggrieved employees, for the period spanning April 20, 2019 through March 3, 2021, from
16 pursuing any action under PAGA against the Released Parties based on or arising out of alleged
17 violations of Labor Code sections alleged in the Lawsuit through the end of the Settlement Period.
18 This release applies whether or not a given Settlement Group Member receives or cashes his or
19 her Individual Settlement Award (“Released Claims”).²³

20 Upon the Effective Date, and in exchange for the amount awarded by the court not to
21 exceed the \$10,000 enhancement payment requested, Plaintiff, on Plaintiff’s own behalf and on
22 behalf of Plaintiff’s heirs, agents, representatives, attorneys, executors, administrators, successors,
23 and assigns, and to the greatest extent permitted by law, fully, finally, and forever releases and
24 discharges the Released Parties (including Defendant), and all persons acting under, by, through,
25 or in concert with the Released Parties, from any and all claims, demands, rights, liabilities, and
26 causes of action of every nature and description whatsoever, known or unknown, asserted or that

27 ²¹ Settlement Agreement, at ¶ 7(e)(iii).

28 ²² *Id.*, at ¶ 9(a).

²³ *Ibid.*

1 might have been asserted, whether in tort, in contract, or for violation of any state or federal
2 statute, law, rule, or regulation arising out of, relating to, or in connection with any act or
3 omission by, or on the part of, any of the Released Parties committed or omitted prior to the
4 execution the Agreement and relating to Plaintiff's employment with, or resignation from
5 employment with, any of the Released Parties, including, but not limited to, any claims or causes
6 of action that were asserted, or which could be asserted, in the PAGA Notice or the Lawsuit
7 ("General Release").²⁴

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

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

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²⁴ Settlement Agreement, ¶ 9(b)(c).

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 or
8 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
27 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL
28 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that

1 “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*
2 *PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a
3 PAGA settlement involves analysis of several unique features that render the approval process
4 distinct from approval of a class action settlement. A court reviewing a PAGA settlement need
5 only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing
6 Lab. Code § 2699(1)(2)). Although Labor Code section 2699(1) does not set forth the criteria on
7 which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.²⁵ In
8 a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to receive,
9 but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of
10 the PAGA is “to incentivize private parties to recover civil penalties for the government that
11 otherwise may not have been assessed and collected by overburdened state enforcement
12 agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46
13 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the
14 [LWDA] for enforcement of labor laws . . . and for education of employers and employees about
15 their rights and responsibilities under this code, to be continuously appropriated to supplement
16 and not supplant the funding to the agency for those purposes.” See Lab. Code § 2699(j). The
17 recovery of penalties on behalf of the state, by way of a PAGA claim, is essentially a law
18 enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is
19 mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—
20 that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian,*
21 *supra*, at 381.

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26 ²⁵ See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case No. BC596892
27 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833 (May 2017); *Garcia v.*
28 *Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 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 p.
5 *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 proposed Settlement through arm’s-length negotiations through
11 counsel, with the assistance of an experienced and respected private mediator, Jeffrey Krivis, at a
12 full-day mediation.²⁶ Under the auspices of the mediator, the Parties were ultimately able to reach
13 a settlement.²⁷ A settlement agreement that is “the product of extensive and hard-fought
14 adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v.*
15 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

16 The proposed Settlement is presumptively fair because: (1) it is the product of non-
17 collusive, arm’s-length negotiations that were overseen by an independent mediator
18 knowledgeable in wage-and-hour litigation; (2) it was negotiated by counsel with significant
19 experience in similar wage-and-hour litigation; and (3) it occurred after counsel for the Parties
20 engaged in significant investigation to evaluate the strength and potential value of the PAGA
21 claim, and the risks of litigating this claim through trial.²⁸

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27 ²⁶ Han Dec., at ¶¶ 15-16.

28 ²⁷ *Id.*, at ¶ 16.

²⁸ *Id.*, at ¶¶ 5-8, 15-16, 22.

1 After engaging in formal and informal discovery, the Parties participated in settlement
2 negotiations to try and resolve the lawsuit. These efforts included participating in extensive
3 formal mediation conducted by Jeffrey Krivis on March 3, 2021, a well-regarded mediator
4 experienced in mediating complex employment matters.²⁹ During the mediation, the Parties
5 discussed all aspects of the case, including the risks and delays of further litigation, the risks to
6 both Parties of proceeding with trial, the law relating to representative PAGA actions, off-the-
7 clock theory, and meal and rest breaks, the evidence produced and analyzed, and the possibility of
8 bifurcation of discovery and/or trial and appeals, among other things.³⁰ During all settlement
9 discussions, Parties conducted their negotiations at arm's length from an adversarial position.³¹

10 Based on all of the information available to the Parties and with the assistance of the
11 experienced mediator, the Parties have agreed that this matter is well-suited for settlement given
12 the strengths and weaknesses of the PAGA claim.³² Plaintiff's Counsel believes that the proposed
13 Settlement is a fair, adequate, and reasonable resolution of this matter.³³ Plaintiff's Counsel has
14 extensive experience in representative and class action wage-and-hour litigation and used that
15 experience to achieve a great result for Plaintiff, Settlement Group Members, and the LWDA.³⁴
16 Therefore, the Court should give considerable weight to the competency, experience, and opinion
17 of counsel and the involvement of a neutral mediator in assuring that the proposed Settlement is a
18 product of hard-fought negotiations that was entered without collusion. See *Kirkorian v. Borelli*
19 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
20 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
21 of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
22 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of
23 an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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26 ²⁹ Han Dec., at ¶ 15.

27 ³⁰ *Id.*, at ¶¶ 15, 21-22.

28 ³¹ *Id.*, at ¶ 15.

³² *Id.*, at ¶ 22.

³³ *Id.*, at ¶ 35.

³⁴ *Id.*, at ¶¶ 5-8, Exh. A.

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

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

9 Plaintiff's core allegation is that Defendant has systematically violated the Labor Code,
10 with respect to Plaintiff and Settlement Group Members by, *inter alia*, by failing to properly
11 compensate minimum and overtime wages, failing to provide compliant meal and rest breaks and
12 associated premium pay, failing to timely pay wages, failing to provide compliant wage
13 statements, and failing to reimburse employees for necessary business expenses.³⁵ For example,
14 Plaintiff claimed that under Defendant's policies and procedures which applied to all non-exempt
15 employees in California, Plaintiff and Settlement Group Members were not provided legally
16 required rest breaks because the heavy workload employees were expected to undertake often
17 forced them to work through their meal and rest breaks.

18 Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁶
19 some courts have also found that, for various reasons, the issues raised here—non-compliant meal
20 periods, non-compliant rest periods, and off-the-clock work—raise individualized issues and/or
21 are unmanageable, and thus are not suitable for adjudication as to a group of employees.³⁷

22 ³⁵ Han Dec., at ¶ 19.

23 ³⁶ See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other*
24 *grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2
25 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-
26 and-hour claims, including misclassification and overtime, recognizing that "statistical sampling may provide
27 assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able to
28 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").

³⁷ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 25, 29, 31, and 34-35 (determining that in a
misclassification case "based on allegations that the employer consistently imposed a uniform policy or de facto
practice on [employees], the party must still demonstrate that the illegal effects of this conduct can be proven
efficiently and manageably within a class setting" 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

(Footnote continued)

1 Defendant contended that courts have found that due process to defendant requires that the
2 adjudication of a PAGA claim meet a “manageability” requirement. See, e.g., *Liuy v. Merrill*
3 *Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court
4 dismissed the PAGA claim because a multitude of individualized assessments would be
5 necessary, making the PAGA claim unmanageable).

6 Defendant maintained several defenses to Plaintiff’s theory of liability, which, if
7 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
8 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
9 continues to have, legally compliant employment policies and practices throughout the statutory
10 period. Defendant denied that it ever violated any provision of the Labor Code, including, but not
11 limited to, those sections for which Plaintiff seeks penalties under the PAGA. Defendant further
12 denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any
13 purpose other than the Settlement.³⁸

14 Defendant may also challenge Plaintiff’s standing as an aggrieved employee and denied
15 that Defendant’s other employees, whom Plaintiff sought to represent, were aggrieved.³⁹ This
16 would pose a risk to recovery because, at the time, multiple courts had taken an approach
17 requiring a plaintiff to establish standing and face the possibility of bifurcation of discovery
18 and/or trial of the PAGA claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at p. 1001
19 (noting that PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful
20 action”); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4
21 (finding that judicial economy supported bifurcation because of the difficulties and inherent
22 uncertainties of being able to establish liability with respect to a large number of potentially
23 aggrieved employees and noted that “PAGA’s public purpose would be ill-served if the court
24 finds [the plaintiff] has not been aggrieved by a Labor Code violation.”); *Horton v. Jones* (1972)
25 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid
26 _____
27 process”); *Mies v. Sephora USA, Inc.* (2015) 234 Cal. App. 4th 967, 971 and 982—86 (affirming decision denying
28 class certification in a misclassification case because determining liability would require an individual assessment as
to how each of the employees spent their time).

³⁸ Han Dec., at ¶ 20.

³⁹ *Id.*, at ¶ 21.

1 waste of time and money on trial and litigation of issues could be rendered made moot).

2 Defendant also argued that an important feature of PAGA is that a court retains discretion
3 to lower the penalties if, based on the facts and circumstances of the particular case, to do
4 otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” Lab.
5 Code § 2699(e)I(2); see also *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th
6 1112, 1136. Defendant maintained, and continues to maintain that it had, and continue to have,
7 legally compliant employment policies and practices throughout the statutory period. Defendant
8 denies that it ever violated any provision of the Labor Code, including, but not limited to, those
9 sections for which Plaintiff seeks penalties under the PAGA.⁴⁰ Even if, *arguendo*, such violations
10 occurred, which Defendant denies, Defendant contended that said violations would only be
11 considered to be “initial violations” and thus heightened “subsequent violation” penalties were
12 not warranted. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163
13 Cal.App.4th 1157, 1208-09 (Employer cannot be presumed to be aware that its continuing
14 underpayment of employees is a violation subject to penalties until has been notified that it is a
15 violation).

16 Defendant also contended that, with respect to a PAGA claim, the Court was unlikely to
17 assess cumulative penalties for the maximum numbers of possible separate Labor Code
18 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
19 certain conduct may be regulated by multiple provisions of the Labor Code that are interrelated
20 and work in tandem. As such, Defendant contended that cumulative penalties and heightened
21 penalties would be unjust, arbitrary, oppressive, and confiscatory.⁴¹

22 While Plaintiff maintains that her PAGA claims have merit, in reaching the Settlement,
23 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position
24 and the uncertainty of how the case might have concluded as the litigation continued, at trial,
25 and/or appeals.⁴²

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27 ⁴⁰ Han Decl., at ¶ 20.

28 ⁴¹ *Id.*, at ¶ 21.

⁴² *Id.*, at ¶ 22.

1 The provisions of the Labor Code potentially triggering PAGA penalties in this case
2 include but are not limited to Labor Code sections 201, 204, 226(a), 226.7, 510, 512(a), 1194,
3 1197, 1197.1, 1198, 2800, and 2802. Defendant asserted that, regardless of the results of the
4 underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary.
5 Defendant also maintained that, in addition to its strong arguments against the underlying claims,
6 it had a strong argument that it would be unjust to award maximum PAGA penalties given the
7 current unsettled state of law.⁴³

8 Plaintiff's Counsel calculated penalties under this cause of action by multiplying the
9 number of active Settlement Group Members (because of the shortened statutory period for this
10 claim), by the civil penalties that each could be awarded for the Labor Code sections enumerated
11 under Labor Code section 2699.5 that were applicable in this case. Class Counsel then applied
12 discounts in light of the countervailing arguments with regard to the other causes of action, as
13 well as the Court's power to award "a lesser amount than the maximum civil liability." Lab.
14 Code § 2699(e)(2).⁴⁴

15 Given the state of the law and the range of PAGA penalties requested and actually
16 awarded in California courts, it is difficult to determine a reasonable value and actual exposure for
17 PAGA penalties. However, if PAGA penalties are granted on any one of the violations alleged in
18 Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be
19 approximately \$2,625,700 $(([1 \times \$100] + [60 \times \$200]) \times 217 \text{ employees})$. Plaintiff calculated
20 Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the
21 average number of pay periods (61) during the one-year statutory period. Multiplying the PAGA
22 exposure by the number of alleged violations under the PAGA theories of recovery (6) gives
23 potential civil penalties of \$15,754,200.⁴⁵

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27 ⁴³ Han Dec., ¶ 23.

28 ⁴⁴ *Id.*, at ¶ 24.

⁴⁵ *Id.*, at ¶ 25.

1 Although Plaintiff argued he could obtain over \$15 million for PAGA penalties, it seems
2 highly unlikely that the Court would award such a large amount.⁴⁶ PAGA’s plain language
3 indicates that an employer will be assessed a lower, “initial” penalty for each initial pay period in
4 which a violation occurs, and a higher, “subsequent” penalty for each subsequent pay period in
5 which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163
6 Cal.App.4th 1157; however, the court held, “Until the employer has been notified that it is
7 violating a Labor Code provision (whether or not the commissioner or court chooses to impose
8 penalties), the employer cannot be presumed to be aware that its continuing underpayment of
9 employees is a ‘violation’ subject to penalties [and will be assessed only the ‘initial’ violation
10 rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be interpreted as indicating
11 that until the Labor Commissioner or a court informs an employer that it has violated the Labor
12 Code, the employer can only be assessed the “initial” violation rate. Under this interpretation, the
13 maximum individual civil penalty for one statutory violation is \$21,700 (217 employees x 100
14 (initial violation)), and for all possible Labor Code violations is \$130,200.

15 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be
16 “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for
17 different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
18 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty for
19 each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1),
20 which states that “an aggrieved employee may recover the civil penalty described in subdivision
21 (f)...on behalf of himself or herself and other current or former employees against whom one or
22 more of the alleged violations was committed” (emphasis added). However, Defendants
23 contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013)
24 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the
25 aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties.
26 Without stacking and limited to the initial violation, the PAGA penalties would be limited to
27 \$21,700 on the low end and \$130,200 on the high end based on six (6) major theories of recovery.

28 ⁴⁶ Han Dec., at ¶ 26.

1 To the extent Defendant’s exposure remains in the hundreds of thousands of dollars, the
2 civil penalties would certainly be “unjust, arbitrary and oppressive, or confiscatory.” In fact,
3 many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v.*
4 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving
5 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’
6 full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either
7 class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
8 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
9 the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear”
10 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
11 obligations].).

12 Under a more conservative approach, Plaintiff’s Counsel considered the possibility that
13 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to
14 \$130,200 [217 employees x \$100 x 6 theories of recovery].⁴⁷

15 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
16 Many of the causes of action brought were cumulative for which the Court may or may not stack
17 the violations. Also, for the off-the-clock, overtime, reimbursement, and meal and rest period
18 violations, they did not occur every single pay period. Thus, the maximum penalties for each pay
19 period are not justified. It was indeed arguable whether the Court would award the maximum
20 penalties under the law. Thus, a Gross Settlement Amount of \$350,000 to PAGA civil penalties
21 was reasonable and significant. Where PAGA penalties are negotiated in good faith and “there is
22 no indication that [the] amount was the result of self-interest at the expense of other Class
23 Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case
24 No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g.,*
25 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (20 10) (“[T]rial court did not abuse its
26 discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).
27 The negotiations were under the auspices of a well-respected mediator, Jeffrey Krivis, who

28 ⁴⁷ Han Dec., at ¶ 26.

1 regularly mediates wage and hour litigation involving PAGA claims. Plaintiff's Counsel
2 negotiated that approximately an average of \$26.32 in penalties per aggrieved pay period would
3 be fair and reasonable. Considering the recent cases justifying \$5 per pay period, *see e.g.*
4 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, \$36.88 per pay period is a fair result.⁴⁸

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 settlement
8 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
9 litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
10 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. Plaintiff's Counsel propounded multiple sets of written discovery
13 requests (Form Interrogatories, Set One, Special Interrogatories, Sets One, Request for Production
14 of Documents, Set One, Requests for Admissions, Set One). In addition, the Parties exchanged
15 documents and data relevant to Plaintiff's claim and Defendant's defenses, including, and not
16 limited to, Plaintiff's employment records, Settlement Group Members' general job
17 responsibilities, payroll data, workweek data, and Defendant's exemplar operations and employee
18 handbook, in an effort to determine the potential value and strength of the PAGA claim.⁴⁹
19 Counsel for the Parties undertook significant investigation, and also invested time reviewing and
20 analyzing relevant documents and data to evaluate Plaintiff's claims, including, and not limited
21 to, Plaintiff's Counsel's calculation of the potential penalties recoverable under the PAGA.⁵⁰

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27 ⁴⁸ Han Dec., at ¶ 27.

28 ⁴⁹ *Id.*, at ¶¶ 14, 22.

⁵⁰ *Id.*, at ¶¶ 13-14.

Had the case not settled, the Parties would have to conduct additional extensive formal discovery, including additional written discovery and depositions of party and percipient witnesses who are located all over California, to prepare the case for trial. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case.⁵¹ Litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond final judgment if either party were to appeal adverse rulings to the Court of Appeal.⁵² Additionally, there is a real possibility that Plaintiff would recover nothing, for himself, or on behalf of Settlement Group Members or the LWDA, after years of labor-intensive litigation. Avoiding these risks and future contentious litigation, involving 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 Serv. 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 a significant monetary benefit to the LWDA and Settlement Group Members and falls well within the range of acceptable settlement under the circumstances. Under the Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$350,000, which encompasses the PAGA Penalties Fund, the Attorneys Fees Award, the Litigation Costs Award, the Administration Costs, and the enhancement award.⁵³ Subject to Court Approval, the following amounts will be subtracted from the Gross Settlement Amount to yield the PAGA Penalties Fund: (1) the Attorneys’ Fees Award of \$133,000; (2) the Litigation Costs Award of \$11,250.24; (3) Administration Costs currently estimated at \$6,500; and (4) the enhancement award of \$10,000 to Plaintiff.⁵⁴ The PAGA Penalties Fund is currently estimated to be 189,249.76, seventy-five percent (75%) of which (\$141,937.32) will be paid to the LWDA and twenty-five percent (25%) of which (\$47,312.44) will be paid to the Settlement Group.⁵⁵ There is

⁵¹ Han Dec., at ¶ 20.

⁵² *Id.*, at ¶ 22.

⁵³ Settlement Agreement, at ¶ 7(a).

⁵⁴ *Id.*, at ¶ 7(b)(i)-(iv).

⁵⁵ *Id.*, at ¶ 7(b)(iv)(A)(B).

1 no reason to doubt the fairness of the proposed plan of allocation of the PAGA Penalties Fund as
2 it fully complies with Labor Code section 2699(i).

3 The Settlement is a compromise of disputed claims. Plaintiff and her counsel recognize
4 the expense and length of continued proceedings necessary to litigate the disputes through trial
5 and any possible appeals.⁵⁶ Plaintiff and his counsel have also taken into account the uncertainty
6 and risk of the outcome of further litigation, and the difficulties and delays inherent in such
7 litigation. Plaintiff and his counsel are also aware of the burdens of proof necessary to establish
8 liability, both generally and in response to Defendant's defenses, and the difficulties in
9 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff and
10 other Settlement Group Members. Plaintiff and his counsel have also taken into account
11 Defendant's agreement to enter into a settlement that confers significant relief upon the LWDA
12 and Settlement Group Members.⁵⁷

13 Considering all of the facts in this case, Plaintiff and his counsel have determined that the
14 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is
15 in the best interests of the LWDA and Settlement Group Members.⁵⁸

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

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27 ⁵⁶ Han Dec., at ¶ 22.

28 ⁵⁷ *Id.*, at ¶ 19.

⁵⁸ *Id.* at ¶ 35.

1 The result achieved in this case, and the PAGA allocation provided by this Settlement, is
2 well within the range of acceptable settlement under the circumstances, especially when
3 compared to the settlement of PAGA claims approved as reasonable in other cases.⁵⁹ Here, the
4 value obtained for settlement of the PAGA claim is very significant, and it will be distributed in
5 accordance with the PAGA statute, to supplement the LWDA budget to educate employees and
6 employers and seek enforcement of labor laws.

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

9 Plaintiff's Counsel are highly experienced in complex representative and class action
10 wage-and-hour litigation.⁶⁰ In the view of Plaintiff's Counsel, the benefit conferred by the
11 Settlement is eminently fair and reasonable, and is in the best interests of the LWDA and
12 Settlement Group Members in light of the risk, delay, and uncertainty of continued litigation and
13 the substantial monetary benefits provided for by the Settlement.⁶¹ Furthermore, courts have
14 acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees
15 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
16 Code violations as the evidence will sustain[.]" *Williams, supra*, 548 (citing Lab. Code §
17 2699(g)(1)(i)).

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25 ⁵⁹ See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833 (May 2017) (approving
26 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving
27 \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14
28 (approving \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
(approving \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at
*14 (approving \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom 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).

⁶⁰ Han Dec., at ¶¶ 5-8, Exh. A.

⁶¹ *Id.* at ¶ 35.

1 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES AWARD.**

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

3 The Settlement establishes a Gross Settlement Amount of \$350,000.⁶² The Settlement
4 provides for Plaintiff's Counsel to apply to the Court for an Attorneys' Fees Award of up to
5 thirty-eight percent (38%) of the Gross Settlement Amount, which is \$133,000.⁶³ The requested
6 Attorneys' Fees Award is commensurate with (1) the risk Plaintiff's Counsel took in bringing and
7 litigating this case, (2) the time, effort and expense dedicated to the case, (3) the skill and
8 determination Plaintiff's Counsel has shown, (4) the results Plaintiff's Counsel has achieved
9 throughout the litigation, (5) the value that Plaintiff's Counsel has achieved for Plaintiff, the
10 LWDA, and Settlement Group Members, and (6) the other cases Plaintiff's Counsel could not
11 pursue in order to devote its time and efforts to this matter.

12 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter
13 of right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees
14 and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is
15 by definition "for the benefit" of others and has secured monetary awards for a large number of
16 Settlement Group Members, as well as the LWDA.⁶⁴

17 The LWDA Payment will also benefit the agency in enforcing labor laws and educating
18 "employers and employees about their rights and responsibilities under [the Labor Code]." Lab.
19 Code § 2699(i).

20 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
21 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
22 confirmed by the California Supreme Court in recent years. *Laffitte v. Robert Half Int'l, Inc.*
23 (2016) 1 Cal.5th 480 at pp. 486 & 506. While trial courts have discretion to apply either a lodestar
24 method or percentage of-the-fund method, the California Supreme Court has taken the position
25 that trial courts also "retain the discretion to forgo a lodestar cross-check and use other means to

26 ⁶² Settlement Agreement, at ¶ 7(a).

27 ⁶³ *Id.*, at ¶ 7(b)(i).

28 ⁶⁴ See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (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 evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage of fund
2 method survives in California." *Id.* (internal quotes omitted); see also *Wershba, supra*, 91
3 Cal.App.4th at p. 253.

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

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

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

20 The percentage fee method is preferred in representative actions because "it better
21 approximates the workings of the marketplace than the lodestar approach." *Lealao, supra*, 82
22 Cal.App.4th at p. 49. California law provides that the award for attorneys' fees should be
23 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
24 based on the result achieved and risk incurred. See *Lealao, supra*, 82 Cal.App.4th at p. 47-50;
25 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
26 defendant agrees to pay the attorneys a percentage of the fund created by the settlement, use of
27 that percentage method is appropriate. *Lealao* at p. 32. Fee awards that undercompensate counsel
28 for their work will "chill the private enforcement essential to the vindication of many legal rights

1 and obstruct the representative actions that often relieve the courts of the need to separately
2 adjudicate numerous claims,” *Lealao*. at 3. Therefore, fees in class and representative actions
3 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
4 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal ... is the award of a
5 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of
6 calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-558 (quotation omitted).
7 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement recovered,
8 depending on the circumstances of the case.⁶⁵

9 Plaintiff’s Counsel’s application for attorneys’ fees, in light of the facts and circumstances
10 surrounding the case, is well within the range of reasonableness. Plaintiff’s Counsel has
11 investigated and litigated this case for months before mediation, with the real possibility of an
12 unsuccessful outcome and no fee recovery of any kind.⁶⁶ The ongoing work has been extensive,
13 and ultimately successful in achieving a settlement resolution. See, § VI.B.1, *infra*.

14 In the present case, Plaintiff’s Counsel has borne all of the risks and costs of litigation and
15 will not receive any compensation until recovery is obtained.⁶⁷ Plaintiff’s Counsel are well-
16 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable
17 result for Plaintiff, Settlement Group Members, and the LWDA.⁶⁸ Considering the amount of the
18 fees requested, work performed, risks incurred, success of this litigation, and experience of
19 Plaintiff’s Counsel in handling similar matters, the requested Attorneys’ Fees Award and
20 Litigation Costs Award are reasonable and should be awarded.

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23 ⁶⁵ See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees of 45% of the \$7.3
24 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp.
25 1195 (awarding approximately 53% of the settlement fund as attorney fees). California courts routinely approve
26 attorneys’ fee awards “average[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
27 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
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”).

28 ⁶⁶ Han Dec., at ¶¶ 13-14.

⁶⁷ *Id.*, at ¶ 32.

⁶⁸ *Id.*, at ¶¶ 5-8, 35, Exh. A.

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

3 The factors which courts consider in determining whether fee awards are reasonable,
4 support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the
5 novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal
6 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
7 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
8 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
9 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the
10 nature and length of the professional relationship with the client; and (12) awards in similar cases.
11 *Camden I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Each of these factors
12 favors the attorney fee award sought herein; however, some of the most relevant factors to this
13 Court's fee determination will be addressed below. It should be highlighted that the percentage
14 award sought is commensurate with the time, effort, and expense dedicated to the case, the
15 contingent nature of the fee and the risks taken in commencing this action, the skill and
16 determination required, the results achieved by Plaintiff's Counsel, and the value of the
17 Settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the LWDA, and Settlement
18 Group Members. As such, an award of thirty-eight percent (38%) of the Gross Settlement
19 Amount is reasonable.

20 **1. Time & Labor**

21 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
22 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
23 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
24 issues, Defendant's business, and its operations and employment policies, practices, and
25 procedures.⁶⁹ Plaintiff's Counsel conducted investigations and discovery into the facts of the case,
26 including reviewing and analyzing a large volume of data and documents regarding Settlement
27 Group Members' employment with Defendant, *inter alia*, time and payroll records, workweeks

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⁶⁹ Han Dec., at ¶¶ 12-13.

1 data, and Defendant's operations and employment policies, practices, and procedures (including
2 and not limited to the Employee Handbook, acknowledgments re: timekeeping requirements,
3 meal breaks and rest breaks, job descriptions, various procedures, and guidelines). During the
4 litigation of the case, Plaintiff's Counsel interviewed and obtained information from Plaintiff and
5 Settlement Group Members, served multiple sets of discovery requests, conducted legal research,
6 reviewed and analyzed a volume of documents and data, evaluated the PAGA claim and
7 calculated the potential value of penalties recoverable under PAGA, and prepared the mediation
8 brief.⁷⁰ Plaintiff's Counsel also performed other work including, *inter alia*, case strategy and
9 analysis; drafting, reviewing, and revising pleadings and motions; preparing for and attending
10 court proceedings; undertaking calculations of the value of the claims; and engaging in extensive
11 settlement negotiations.⁷¹

12 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
13 to prosecute the case with maximum efficiency, and has fully and actively participated in this
14 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT D**" to the
15 accompanying Declaration of Douglas Han sets forth in detail the hours that Plaintiff's Counsel
16 has spent performing tasks in this matter. Plaintiff's Counsel has collectively spent 457.1 hours to
17 obtain a recovery on behalf of Plaintiff, Settlement Group Members, and the LWDA. These hours
18 were required to bring the case to its successful conclusion.⁷² In light of the value of time
19 expended and the carrying of costs involved in this litigation, the requested Attorneys' Fees
20 Award is fair, adequate, and reasonable.

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27 ⁷⁰ Han Dec. ¶¶ 13-14.

28 ⁷¹ *Id.*, at ¶ 13.

⁷² *Id.*, at ¶ 30, Exh. D.

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. Defendant retained well-respected counsel to
4 represent their defenses. Defendant and its counsel felt very strongly about Defendant's ability to
5 prevail on the merits and avoid representative adjudication of PAGA penalties. Plaintiff and his
6 counsel believe that the PAGA claim has merit and that Plaintiff would prevail at trial. Plaintiff's
7 Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and
8 during the litigation. Plaintiff's Counsel took steps to prepare the case for trial, and had every
9 intention of taking the case to trial if Defendant did not offer an appropriate settlement.

10 Plaintiff's Counsel's effort and skill was used to, among other things, investigate the
11 allegations and gather facts, research the legal issues, analyze data and information obtained from
12 Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate the
13 Settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used their
14 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
15 and obtain a recovery now, with maximum efficiency, as opposed to the possibility of future
16 recovery, after great expense and time.⁷³

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

18 The Settlement represents a fair resolution of this lawsuit, given the uncertainty and risks
19 of further litigation.⁷⁴ Had the case not settled, Defendant would have vigorously challenged
20 manageability and liability, and sought to have the Court reduce penalties. Defendant, however,
21 faced risks as well, including and not limited to, the Court assessing penalties. Additionally,
22 preparing for trial would have been extraordinarily expensive for the Parties.

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⁷³ Han Dec., at ¶¶ 11-14.

⁷⁴ *Id.*, at ¶ 35.

At this stage, the Settlement is preferred over continued litigation because such resolutions save time and money which would otherwise be used in 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 Settlement Group Members and the LWDA while avoiding further 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 it would obtain any recovery. Plaintiff's Counsel has invested 457.1 hours of time to obtain relief on behalf of Plaintiff, Settlement Group Members, and the LWDA.⁷⁵ Plaintiff's Counsel are also requesting a Litigation Costs Award for reimbursement of its reasonable litigation costs and expenses in the amount of \$11,250.24, as provided for in the Settlement Agreement.⁷⁶

Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷ If Plaintiff's Counsel had not been successful, the time that it had devoted to litigating the case would have been for naught, and would not have produced any fee or reimbursement of costs. Plaintiff's Counsel are well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result for Settlement Group Members and the LWDA.⁷⁸ The skill and determination that Plaintiff's Counsel has shown justify the requested Attorneys' Fees Award and Litigation Costs Award. Considering the amounts requested, work performed, and risks incurred, the requested Attorneys' Fees Award and Litigation Costs Award are reasonable and should be awarded.

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⁷⁵ Han Dec., at ¶ 30, Exh. D.

⁷⁶ *Id.*, at ¶ 32, Exh. F.

⁷⁷ *Id.*, at ¶ 32.

⁷⁸ *Id.*, at ¶¶ 5-8, 35, Exh. A.

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

2 The results achieved, particularly in light of the difficulties inherent in similar cases and
3 the specific difficulties faced in this case, are considerable. Here, the results achieved, and the
4 recovery obtained on behalf of Plaintiff, Settlement Group Members, and the LWDA represent a
5 fair and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a
6 settlement that provides for a Gross Settlement Amount of \$350,000, and it is currently estimated
7 that the PAGA Penalties Fund available for distribution to Settlement Group Members and the
8 LWDA, is \$189,249.76.⁷⁹

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

10 Plaintiff's Counsel are a recognized class action and complex litigation law firm that
11 employed its attorneys' knowledge, skills, and experience in bringing the case to a successful
12 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
13 experience, have recovered millions of dollars on behalf of thousands of individuals in California,
14 and have successfully handled numerous significant wage-and-hour class action and
15 representative action cases.⁸⁰

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

17 Plaintiff's Counsel has performed work that is of significant value based on reasonable
18 hours and prevailing hourly rates of compensation. While the percentage-of-the-benefit approach
19 is endorsed as the better approximation of the workings of the marketplace than the lodestar
20 approach, courts may also use the lodestar method to "cross-check" the results of the other. See
21 *Laffitte, supra*, 1 Cal.5th at p. 505 ("A lodestar cross-check is simply a quantitative method for
22 bringing a measure of the time spent by counsel into the trial court's reasonableness
23 determination"); see also, e.g., *Vizcaino*, 290 F.3d at p. 1050 ("[W]hile the primary basis of the
24 fee award remains the percentage method, the lodestar may provide a useful perspective[.]"). The
25 lodestar calculation "does not override the trial court's primary determination of the fee as a
26 percentage" and "does not impose an absolute maximum or minimum on the potential fee award."

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28 ⁷⁹ Han Dec. at ¶ 17.

⁸⁰ *Id.*, ¶ 5-8, Exh. A.

1 *Laffitte, supra*, 1 Cal.5th at p. 505. The lodestar is calculated using reasonable hours and
2 reasonable prevailing hourly rates for the attorneys—counsel is entitled to compensation for every
3 hour reasonably spent on the matter. *Ketchum, supra*, 24 Cal.4th at p. 1131-33.

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

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

8 As discussed above, this case was highly contested and required a significant amount of
9 time and labor. Defendant made it clear soon after the action was filed that they disputed all of
10 Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant
11 also argued, *inter alia*, that they had legally compliant employment policies and practices
12 throughout the statutory period.⁸¹ Defendant raised affirmative defenses and denied liability.⁸²
13 The handling of this litigation involved a great amount of effort, and also required and involved
14 the exercise of a high level of skill, which Plaintiff’s Counsel has, as a result of its extensive
15 experience in complex and class action wage-and-hour litigation. Long and difficult battles would
16 have followed as the case moved toward trial, including taking and defending declarant and
17 expert depositions, PMK depositions, conducting additional extensive formal discovery, and
18 engaging in further extensive motion practice. As Plaintiff’s Counsel geared up for these battles,
19 Plaintiff’s Counsel undertook intense preparation in an attempt to resolve the entire matter
20 through settlement negotiations. Plaintiff’s Counsel had to bring together a volume of data and
21 documents that were produced by Defendant and obtained from other sources, and conducted
22 extensive review and analysis of these documents and data to strategize and evaluate the case.⁸³

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27 ⁸¹ Han Dec., at ¶ 20.

28 ⁸² *Id.*, at ¶¶ 20-21.

⁸³ *Id.*, ¶¶ 13-14.

1 As set forth above in § VI.B.1 *infra*, attached to the Declaration of Douglas Han is the
2 Attorney Task and Time Chart that sets forth in detail the numerous tasks that Plaintiff's Counsel
3 performed in this matter, and the time required for completing those tasks.⁸⁴ The chart
4 demonstrates that Justice Law Corporation have spent a total of 457.1 hours on this matter. In
5 light of these facts and circumstances, Plaintiff's Counsel has spent a reasonable number of hours
6 to achieve results on behalf of Plaintiff, Settlement Group Members, and the LWDA.

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

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

16 Plaintiff's Counsel has been actively involved in the prosecution of this case, prior to the
17 commencement of the lawsuit and all the way up to approval of the Settlement, and its dedication
18 to the representation of Settlement Group Members and the LWDA has precluded other
19 employment. Plaintiff's Counsel bore the risk that, despite all of its efforts and skills employed,
20 there may be no recovery. Ultimately, Plaintiff's Counsel successfully reached a settlement that
21 amounts to a Gross Settlement Amount of \$350,000.

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⁸⁴ *Id.*, Exhibit D.

1 Plaintiff's Counsel expended a significant amount of time in the litigation of this matter as
2 detailed above. Further, as detailed in the 2019 declaration of Richard M. Pearl, Esq. filed
3 concurrently herewith, Plaintiff's Counsel's hourly rates are commensurate with the hourly rates
4 of other wage-and-hour class action attorneys in California and is well within the contingency fee
5 practice. Mr. Pearl has adjudged that the rates \$700 and \$575 per hour are more than reasonable
6 as to attorneys Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song. While the circumstance
7 of every case is unique, the fact remains that the work performed and efforts undertaken by
8 Plaintiff's Counsel in this matter justifies the requested Attorneys' Fees Award.⁸⁵

9 The lodestar method as a cross-check to the percentage fee sought strongly supports the
10 reasonableness of the requested fee award. Based on the attorney time expended on this matter,
11 the fees incurred to date total 284,007.50, which results in a negative 0.47 multiplier cross-
12 checked to the requested amount of \$133,000.⁸⁶ Plaintiff's Counsel, however, seeks a percentage
13 of the Gross Settlement Amount in attorneys' fees of \$133,000, which is thirty-eight percent
14 (38%) of the Gross Settlement Amount. Accordingly, Attorneys' Fees Award of \$133,000 to
15 Plaintiff's Counsel is reasonable and justified based on the percentage method and a lodestar
16 cross-check and should be approved and granted.

17 **VII. THE LITIGATION COSTS TO BE REIMBURSED TO PLAINTIFF'S COUNSEL**
18 **ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED**

19 The Settlement provides for a Litigation Costs Award for reimbursement of litigation
20 costs and expenses of up to \$20,000. As set forth in the Declaration of Douglas Han, Plaintiff's
21 Counsel has collectively incurred \$11,250.24 in litigation costs and expenses, which is less than
22 the maximum amount allocated under the Settlement Agreement and disclosed in the notice.⁸⁷
23 Plaintiff's Counsel seeks only the \$11,250.24 in litigation costs and expenses. Plaintiff's
24 Counsel's litigation costs and expenses incurred were reasonable and necessary in the prosecution
25 of this matter.⁸⁸ Accordingly, Plaintiff's Counsel respectfully request that the Court order

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27 ⁸⁵ Han Dec., at ¶ 31, Exh E.

⁸⁶ *Id.*, at ¶ 31.

28 ⁸⁷ Han Dec., at ¶ 32; Settlement Agreement, at ¶ 7(b)(ii).

⁸⁸ Han Dec., at ¶ 32.

1 reimbursement of the costs and expenses in the amount of \$11,250.24 to Plaintiff's Counsel.

2 **VIII. APPROVAL OF THE PROPOSED COVER LETTER TO SETTLEMENT GROUP**
3 **MEMBERS.**

4 Although PAGA does not require notice to unnamed Settlement Group Members of the
5 Settlement, the Parties prepared, and now present for the Court's consideration and approval, an
6 explanatory cover letter for transmission to Settlement Group Members along with their
7 payments, substantially in the form attached as Exhibit A to the Settlement Agreement. The
8 explanatory cover letter accurately informs Settlement Group Members about this action and the
9 Settlement. Accordingly, Plaintiff respectfully requests that the Court approve the explanatory
10 cover letter.

11 **IX. APPROVAL OF THE PROPOSED ENHANCEMENT AWARD TO PLAINTIFF.**

12 The Settlement provides for an enhancement payment of \$10,000 to be paid to Plaintiff.⁸⁹
13 The purpose of such an award is to incentivize plaintiffs to step into the shoes of the state labor
14 agency and undertake the risks associated with initiating a lawsuit and serving in a representative
15 capacity. See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 ("service payments"
16 compensate named plaintiff "for [her] efforts in bringing the action"); *Clark v. Am. Residential*
17 *Servs., LLC* (2009) 175 Cal.App.4th 785, 804 ("an incentive award is appropriate 'if it is
18 necessary to induce an individual to participate in the suit'"); accord *Ingram v. The Coca-Cola*
19 *Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (internal quotation marks omitted) ("Courts routinely
20 approve incentive awards to compensate named plaintiffs for the services they provided and the
21 risks they incurred during the course of the [...] litigation."); see also, e.g., *Resendez, supra*, Los
22 Angeles County Court, Case No. BC59689 (approving \$10,000 enhancement award in a PAGA
23 action).

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28 ⁸⁹ Settlement Agreement, ¶ 7(b)(iv)(B)(3).

1 Here, Plaintiff contributed considerable time and effort to the litigation in order to enforce
2 the Labor Code on behalf of the LWDA and for the benefit of other Settlement Group Members,
3 producing relevant documents and past employment records, and providing the facts and evidence
4 necessary to support the allegations asserted in this action.⁹⁰ Plaintiff was available whenever his
5 counsel needed him and tried to obtain documents and information that would aid the litigation of
6 the PAGA claim and recovery of benefits for the LWDA and Settlement Group Members.⁹¹
7 Additionally, as a part of the Settlement, Plaintiff has agreed to a broader release of claims than
8 the release of claims that applies to Settlement Group Members.⁹² Accordingly, it is reasonable
9 and just for Plaintiff to receive an enhancement award of \$10,000, in addition to the Individual
10 Settlement Award he will receive as a Settlement Group Member, for his services in litigating this
11 action to enforce California wage-and-hour laws.

12 **X. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND**
13 **SHOULD BE APPROVED.**

14 As set forth in the bid submitted by Phoenix Class Action Administration Solutions
15 (“Phoenix”), the total estimated Administration Costs are \$6,500. The costs incurred include, but
16 are not limited to, expenses for establishing a qualified settlement fund pursuant to 26 U.S.C. §
17 486B; making all payments required by the Agreement; handling all required state and federal tax
18 withholding and reporting related thereto to the extent necessary; and issuing all appropriate tax
19 forms to Plaintiff, Plaintiff’s Counsel, the Settlement Group, and the LWDA resulting from the
20 settlement payments under the Agreement.⁹³ Accordingly, the Court should grant final approval
21 of payment of \$6,500 to Phoenix, a necessary third-party to the notice and settlement process.

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27 ⁹⁰ Han Dec., at ¶ 34; Declaration of Luis Pelayo (“Pelayo Dec.”), at ¶¶ 4-8.

28 ⁹¹ Han Dec., at ¶ 34; Pelayo Dec., at ¶¶ 6-8.

⁹² Settlement Agreement, ¶ 9(b)(c).

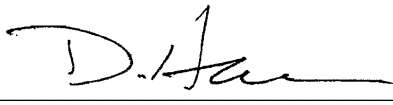
⁹³ *Id.*, at ¶ 6(b).

1 **XI. CONCLUSION**

2 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
3 reached through arm's-length negotiations and considers the risks, complexity, and expense of
4 further litigation. Based thereon, Plaintiff respectfully request that the Court approve the
5 Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for
6 payments to the LWDA, to Settlement Group Members, the Attorneys Fees Award, the Litigation
7 Costs Award, Administration Costs, and the enhancement award.

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10 Dated: May 11, 2021

JUSTICE LAW CORPORATION

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12 By: 
13 Douglas Han
14 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 arivera@justicelawcorp.com

On May 11, 2021, 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 AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Pelayo v. Rancho Foods, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-783776-20**
Court Case No.: 20NWCV00359
Los Angeles 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 May 11, 2021, at Pasadena, California.



Allana Rivera