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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

AMPHASTAR PHARMACEUTICALS,
INC., a Delaware corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CIVDS2011327

Honorable David Cohn
Department S26

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

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

Hearing Date: August 16, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department S26

Complaint Filed: May 29, 2020
FAC Filed: August 5, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 16, 2021, at 10:00 a.m. or as soon as thereafter
2 as the matter may be heard before the Honorable David Cohn in Department S26 of the San
3 Bernardino Justice Center of the Superior Court of the State of California for the County of San
4 Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Priscilla
5 Ramirez (“Plaintiff”) 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 Amphastar Pharmaceuticals, Inc.
8 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”) as set forth in the Parties’ Settlement Agreement and Release
10 (“Settlement Agreement, “Settlement,” or “Agreement”), attached as “**EXHIBIT 2**” to
11 the Declaration of Douglas Han;
- 12 2. Approving the Net Settlement Amount available for payment for PAGA penalties,
13 which is estimated to be \$618,456.81, seventy-five percent (75%) of which
14 (\$463,842.60) will be paid to the California Labor and Workforce Development Agency
15 (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%) of which (\$154,614.20)
16 will be paid to the Aggrieved Employees (“Settlement Share”);
- 17 3. Directing Defendant to transfer the Maximum Settlement Amount to the Settlement
18 Administrator in accordance to the Settlement Agreement;
- 19 4. Directing the mailing of the Settlement Shares accompanied by an explanatory letter
20 substantially to Aggrieved Employees;
- 21 5. Awarding \$7,5000 to Plaintiff as an Incentive Award; and
- 22 6. Awarding to Plaintiff’s Counsel, Justice Law Corporation an Attorneys’ Fees Award
23 in the amount of \$348,250 as compensation for reasonable attorneys’ fees and a
24 Litigation Costs Award in the amount of \$16,843.19 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;

27 ///

28 ///

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 (Priscilla Ramirez) 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: June 9, 2021

JUSTICE LAW CORPORATION

8
9
10 By: 
11 Douglas Han
12 *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 seeks 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 herself, and all non-exempt employees of Defendant in the state of California
6 during the period of time beginning on April 10, 2019 and ending on the earlier of June 10, 2021
7 or the Approval Date (“Aggrieved Employees” and “PAGA Period”).¹

8 Subject to Court approval, Plaintiff and Defendant have agreed to resolve the Lawsuit,
9 brought pursuant to the PAGA for a Maximum Settlement Amount of \$995,000.²

10 The Maximum 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 Attorneys’
12 Fees Award and the Litigation Costs Award to Plaintiff’s Counsel, Justice Law Corporation,
13 pursuant to Labor Code section 2699(g)(1); (3) the Incentive Award to Plaintiff; and (4) the
14 Settlement Administration Costs.³

15 The Net Settlement Amount shall be the Maximum Settlement Amount less the Court-
16 approved Attorneys’ Fees Award, the Litigation Costs Award, the Incentive Award, and Settlement
17 Administration Costs, and is currently estimated to be \$618,456.81. Seventy-five percent (75%)
18 of the Net Settlement Amount will be paid to the LWDA (\$463,842.60), and twenty-five percent
19 (25%) will be paid to the Aggrieved Employees (\$154,614.20) pursuant to Labor Code section
20 2699(i).⁴ Each Aggrieved Employee will receive a Settlement Share proportionate to the number
21 of pay periods he or she worked at Defendant in California during the PAGA Period.⁵

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26 _____
27 ¹ The Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration of Douglas Han
28 (“Settlement Agreement”), at §1.1 and 1.16.

² *Id.*, at § 3.1.

³ *Id.*, at § 3.1 and 4.1.

⁴ *Id.*, § 4.3.

⁵ *Id.*, § 4.3(b).

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 Incentive award, and the Settlement Administration Costs. Plaintiff respectfully
7 requests that this Court approve the Settlement and award the Attorneys' Fees Award, Litigation
8 Costs Award, the Incentive award, and the Settlement Administration Costs, which are provided
9 by the Settlement and requested herein.

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

11 As a specialty pharmaceutical company, Defendant is engaged in the development,
12 manufacture, and marketing of generic and proprietary injectable intranasal and inhalation
13 productions. Plaintiff is a former employee of Defendant who worked as a visual inspector and
14 trainer from approximately September 2018 to August 29, 2019.

15 On or about April 10, 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 May 29, 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 herself and all
20 Aggrieved Employees. On or about August 5, 2020, Plaintiff filed a First Amended Complaint
21 pleading exhaustion of the LWDA filing requirement.

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.

27 ///

28 ///

On April 1, 2021, the Parties participated in a full day of private mediation conducted by Deborah Saxe, Esq., a well-regarded mediator experienced in mediating complex employment matters.⁶ Under the auspices of the mediator, the Parties were able to reach a settlement.⁷

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

III. SUMMARY OF THE SETTLEMENT TERMS

A. Aggrieved Employees

The Aggrieved Employees who are covered by the Settlement are:

All non-exempt employees of Defendant in the State of California at any time during the period of time beginning on April 10, 2019 through June 10, 2021.⁸

Based on information provided by Defendant, there are approximately twenty-two thousand six hundred sixty-nine (22,669) pay periods.⁹

B. Distribution of the Maximum Settlement Amount

Under the terms of the proposed Settlement, Defendant will pay a Maximum Settlement Amount of \$995,000.¹⁰ The Net Settlement Amount will be the Maximum Settlement Amount, less the following amounts: (1) the Attorneys' Fees Award of up to \$348,250 to Plaintiff's Counsel; (2) the Litigation Costs Award in the amount of \$16,843.19 to Plaintiff's Counsel; (3) the Incentive Award of up to \$7,500 to Plaintiff; and (4) the Settlement Administration Costs currently estimated at \$3,950.¹¹ Twenty-five percent (25%) of the Net Settlement Amount will be distributed to the Aggrieved Employees proportionate to the number of pay periods he or she worked at Defendant in California during the PAGA Period, and the remaining seventy-five percent (75%) of the Net Settlement Amount will be transmitted to the LWDA, pursuant to Labor Code section 2699(i).¹² No portion of the Maximum Settlement Amount will revert to Defendant.

///

⁶ Declaration of Douglas Han ("Han Dec."), at ¶ 14.

⁷ *Id.* at ¶ 15.

⁸ Settlement Agreement, at § 1.16.

⁹ Han Dec., at ¶ 9

¹⁰ Settlement Agreement, at § 1.11.

¹¹ *Id.*, at § 4.1.

¹² *Id.*, at § 4.3.

1 **C. Distribution of the Net Settlement Amount**

2 Within thirty (30) calendar days of the Approval Date of the Agreement, Defendant will
3 provide the Settlement Administrator the entire \$995,000 Maximum Settlement Amount.¹³
4 Afterwards, within forty-five (45) calendar days after the Approval Date, the Settlement
5 Administrator will issue the payments required by Section 4 of the Agreement to the appropriate
6 entities or persons.¹⁴

7 Individual Settlement Shares will be paid in the form of a check delivered to each
8 Aggrieved Employee at the last known address on file with Defendant or as updated by the
9 Settlement Administrator. Each Settlement Share will also be accompanied by an explanatory
10 letter.¹⁵ Any Settlement Share checks that are not cashed, deposited, or negotiated within one
11 hundred eighty (180) days after the date of their issuance (“Check Stale Date”) will be void and
12 the amount of those checks will be directed to the California State Controller for the deposit in
13 the Unclaimed Property Fund in the name of the employee.¹⁶

14 Any checks to the Aggrieved Employees that are returned as undeliverable on or before
15 the 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.¹⁷

19 The Net Settlement Amount is currently estimated to be \$618,456.81.¹⁸ In conformity with
20 the PAGA statute, seventy-five percent (75%) of the Net Settlement Amount shall be distributed
21 to 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 Aggrieved Employees
23 proportionate to the number of pay periods he or she worked at Defendant in California during
24 the Settlement Period.¹⁹

25
26 ¹³ Settlement Agreement, § 3.2.

27 ¹⁴ *Id.*, § 4.4.

¹⁵ *Id.*, § 5.3.

¹⁶ *Id.*, § 5.4.

28 ¹⁷ *Id.*, at § 5.3(b).

¹⁸ Han Dec., at ¶ 16

¹⁹ Settlement Agreement, at § 4.3(b).

1 Individual Settlement Shares 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 Aggrieved Employee in connection with his or her Settlement
4 Share.²⁰

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

6 The “Released Parties” are Defendant and its parents, subsidiaries, affiliates, predecessors,
7 successors, agents, insurers, employees (current and former), officers, directors, and attorneys
8 (“Released Parties”).²¹

9 In consideration of Defendant’s payment of the Maximum Settlement Amount, Plaintiff,
10 individually and as the representative acting as a proxy or agent of the LWDA, and the State of
11 California, shall fully, finally, and forever release, settle, relinquish and discharge the Released
12 Parties from any and all claims against the Released Parties for civil penalties asserted in the
13 PAGA Action that were or could have been set forth against Defendant in this Action and the
14 LWDA PAGA Notice Letter, whether stated explicitly or by implication, based on Aggrieved
15 Employees’ work for Defendant during the PAGA Period. This release includes any and all claims
16 for civil penalties, fees, and costs recoverable under the Private Attorneys General Act (Labor
17 Code § 2698, et seq.) based on the facts and claims asserted in the operative complaint filed in the
18 PAGA Action, including without limitation, meal break violations, rest break violations, failure
19 to pay overtime, failure to pay minimum wage, failure to pay wages when due, failure to reimburse
20 business expenses, inaccurate wage statements, or any other allegations and claims which are
21 reasonably related to the allegations and claims asserted in the operative complaint filed in the
22 PAGA Action. This release shall apply to claims arising at any point during the PAGA Period.
23 This release includes any and all claims for civil penalties, fees, and costs recoverable under the
24 Private Attorneys General Act (Labor Code § 2698, et seq.) based on the facts and claims asserted
25 in the operative complaint filed in the PAGA Action, including without limitation, meal break
26 violations, rest break violations, failure to pay overtime, failure to pay minimum wage, failure to
27 pay wages when due, failure to reimburse business expenses, inaccurate wage statements, or any

28 ²⁰ Settlement Agreement, at § 4.5.

²¹ *Id.*, at § 1.20.

1 other allegations and claims which are reasonably related to the allegations and claims asserted in
2 the operative complaint filed in the PAGA Action. This release shall apply to claims arising at
3 any point during the PAGA Period. This release shall become effective immediately upon
4 Defendant's payment of the Maximum Settlement Amount to the Settlement Administrator for
5 distribution as specified in this Settlement Agreement. ("Release").²²

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

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

22 "[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]"
23 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Sup.*
24 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)
25 A "judgment in such an action is binding not only on the named employee plaintiff but also on
26 government agencies and any aggrieved employee not a party to the proceeding" because "the
27 employee plaintiff represents the same legal right and interest as state labor law enforcement
28

²² Settlement Agreement, § 2.1.

1 agencies[,]” “collateral estoppel applies [...] against those for whom the party acted as an agent
2 or proxy[,]” and “[w]hen a government agency is authorized to bring an action on behalf of an
3 individual or in the public interest, and a private person lacks an independent right to bring the
4 action, a person who is not a party but who is represented by the agency is bound by the judgment
5 as though the person were a party.” *Arias, supra*, at 985-986 (citations omitted).

6 As such, consistent with the law, the Settlement does not provide for a procedure for
7 Aggrieved Employees to opt out or otherwise exclude themselves the Settlement.

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

9 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
10 herself and on behalf of other aggrieved employees and the State to recover civil penalties which
11 are specifically established by the PAGA with respect to provisions of the Labor Code that do not
12 otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which,
13 outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code §
14 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code
15 section 2699.3. See Lab. Code § 2699(a).

16 The settlement of a PAGA claim requires court approval. See Lab. Code § 2699(l)(2)
17 (“The superior court shall review and approve any settlement of any civil action pursuant to this
18 part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
19 considered a class action but a law enforcement action” and therefore does not have to meet the
20 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
21 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715,
22 at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not
23 satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal.
24 Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves
25 analysis of several unique features that render the approval process distinct from approval of a
26 class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a
27 negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Lab. Code §
28 2699(l)(2)). Although Labor Code section 2699(l) does not set forth the criteria on which a PAGA

1 settlement is to be judged, courts have approved settlements of PAGA claims.²³ In a PAGA case,
2 the Court's focus is not the amount which "aggrieved employees" are to receive, but instead,
3 whether the total settlement amount achieves the PAGA's objectives. The purpose of the PAGA
4 is "to incentivize private parties to recover civil penalties for the government that otherwise may
5 not have been assessed and collected by overburdened state enforcement agencies." See *Ochoa-*
6 *Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties
7 recovered under the PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor
8 laws . . . and for education of employers and employees about their rights and responsibilities
9 under this code, to be continuously appropriated to supplement and not supplant the funding to
10 the agency for those purposes." See Lab. Code § 2699(j). The recovery of penalties on behalf of
11 the state, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated,*
12 *supra*, 46 Cal.4th at 1003 (stating that the PAGA is mechanism for "an aggrieved employee to
13 recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor
14 law enforcement agencies"); see also *Iskanian, supra*, at 381.

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

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28 ²³ See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case No. BC596892
(June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833 (May 2017); *Garcia v.*
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 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

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

3 The Parties reached the proposed Settlement through arm's-length negotiations through
4 counsel, with the assistance of an experienced and respected private mediator, Deborah Saxe, at a
5 full-day mediation.²⁴ Under the auspices of the mediator, the Parties were ultimately able to reach
6 a settlement.²⁵ A settlement agreement that is "the product of extensive and hard-fought
7 adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v.*
8 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

9 The proposed Settlement is presumptively fair because: (1) it is the product of non-
10 collusive, arm's-length negotiations that were overseen by an independent mediator
11 knowledgeable in wage-and-hour litigation; (2) it was negotiated by counsel with significant
12 experience in similar wage-and-hour litigation; and (3) it occurred after counsel for the Parties
13 engaged in significant investigation to evaluate the strength and potential value of the PAGA
14 claim, and the risks of litigating this claim through trial.²⁶

15 After engaging in formal and informal discovery, the Parties participated in settlement
16 negotiations to try and resolve the lawsuit. These efforts included participating in extensive formal
17 mediation conducted by Deborah Saxe on April 1, 2021, a well-regarded mediator experienced in
18 mediating complex employment matters.²⁷ During the mediation, the Parties discussed all aspects
19 of the case, including the risks and delays of further litigation, the risks to both Parties of
20 proceeding with trial, the law relating to representative PAGA actions, off-the-clock theory, and
21 meal and rest breaks, the evidence produced and analyzed, and the possibility of bifurcation of
22 discovery and/or trial and appeals, among other things.²⁸ During all settlement discussions, Parties
23 conducted their negotiations at arm's length from an adversarial position.²⁹

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27 ²⁴ Han Dec., at ¶¶ 14.

28 ²⁵ *Id.*, at ¶ 15.

²⁶ *Id.*, at ¶¶ 5-8, 14-15, 21.

²⁷ Han Dec., at ¶ 14.

²⁸ *Id.*, at ¶¶ 14, 20-21.

²⁹ *Id.*, at ¶ 14.

1 Based on all of the information available to the Parties and with the assistance of the
2 experienced mediator, the Parties have agreed that this matter is well-suited for settlement given
3 the strengths and weaknesses of the PAGA claim.³⁰ Plaintiff's Counsel believes that the proposed
4 Settlement is a fair, adequate, and reasonable resolution of this matter.³¹ Plaintiff's Counsel has
5 extensive experience in representative and class action wage-and-hour litigation and used that
6 experience to achieve a great result for Plaintiff, Aggrieved Employees, and the LWDA.³²
7 Therefore, the Court should give considerable weight to the competency, experience, and opinion
8 of counsel and the involvement of a neutral mediator in assuring that the proposed Settlement is
9 a product of hard-fought negotiations that was entered without collusion. See *Kirkorian v. Borelli*
10 (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable
11 weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations
12 of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed.*
13 *Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of
14 an experienced mediator in the settlement process confirms that the settlement is non-collusive").

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

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

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28 ³⁰ Han Dec., at ¶ 21.

³¹ *Id.*, at ¶ 34.

³² *Id.*, at ¶¶ 5-8, Exh. 1.

1 Plaintiff's core allegation is that Defendant has systematically violated the Labor Code,
2 with respect to Plaintiff and Aggrieved Employees by, *inter alia*, by failing to properly
3 compensate minimum and overtime wages, failing to provide compliant meal and rest breaks and
4 associated premium pay, failing to timely pay wages, failing to provide compliant wage
5 statements, and failing to reimburse employees for necessary business expenses.³³ For example,
6 Plaintiff claimed that under Defendant's policies and procedures which applied to all non-exempt
7 employees in California, Plaintiff and Aggrieved Employees were not provided legally required
8 rest breaks because the heavy workload employees were expected to undertake often forced them
9 to work through their meal and rest breaks.

10 Although wage-and-hour actions are amenable to resolution as to a group of employees,³⁴
11 some courts have also found that, for various reasons, the issues raised here—non-compliant meal
12 periods, non-compliant rest periods, and off-the-clock work—raise individualized issues and/or
13 are unmanageable, and thus are not suitable for adjudication as to a group of employees.³⁵
14 Defendant contended that courts have found that due process to defendant requires that the
15 adjudication of a PAGA claim meet a “manageability” requirement. See, e.g., *Liuy v. Merrill*
16 *Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court
17 dismissed the PAGA claim because a multitude of individualized assessments would be necessary,
18 making the PAGA claim unmanageable).

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21 ³³ Han Dec., at ¶ 18.

22 ³⁴ See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-84, *modified on other*
23 *grounds by Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2
24 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of resolving wage-
25 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 putative class . . . the trial court may in fact find class analysis a more
efficient and effective means of resolving plaintiffs' overtime claim”).

26 ³⁵ 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
27 misclassification case “based on allegations that the employer consistently imposed a uniform policy or de facto
28 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
process”); *Mies v. Sephora USA, Inc.* (2015) 234 Cal. App. 4th 967, 971 and 982—86 (affirming decision denying
class certification in a misclassification case because determining liability would require an individual assessment as
to how each of the employees spent their time).

1 Defendant maintained several defenses to Plaintiff's theory of liability, which, if
2 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
3 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
4 continues to have, legally compliant employment policies and practices throughout the statutory
5 period. Defendant denied that it ever violated any provision of the Labor Code, including, but not
6 limited to, those sections for which Plaintiff seeks penalties under the PAGA. Defendant further
7 denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any
8 purpose other than the Settlement.³⁶

9 Defendant may also challenge Plaintiff's standing as an aggrieved employee and denied
10 that Defendant's other employees, whom Plaintiff sought to represent, were aggrieved.³⁷ This
11 would pose a risk to recovery because, at the time, multiple courts had taken an approach requiring
12 a plaintiff to establish standing and face the possibility of bifurcation of discovery and/or trial of
13 the PAGA claim. See *Amalgamated Transit Union, supra*, 46 Cal.4th at p. 1001 (noting that
14 PAGA "require[s] a plaintiff to have suffered an injury resulting from an unlawful action");
15 *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, at *4 (finding
16 that judicial economy supported bifurcation because of the difficulties and inherent uncertainties
17 of being able to establish liability with respect to a large number of potentially aggrieved
18 employees and noted that "PAGA's public purpose would be ill-served if the court finds [the
19 plaintiff] has not been aggrieved by a Labor Code violation."); *Horton v. Jones* (1972) 26
20 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid
21 waste of time and money on trial and litigation of issues could be rendered made moot).

22 Defendant also argued that an important feature of PAGA is that a court retains discretion
23 to lower the penalties if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." Lab.
25 Code § 2699(e)I(2); see also *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th
26 1112, 1136. Defendant maintained, and continues to maintain that it had, and continue to have,
27 legally compliant employment policies and practices throughout the statutory period. Defendant
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³⁶ Han Dec., at ¶ 19.

³⁷ *Id.*, at ¶ 20.

1 denies that it ever violated any provision of the Labor Code, including, but not limited to, those
2 sections for which Plaintiff seeks penalties under the PAGA.³⁸ Even if, *arguendo*, such violations
3 occurred, which Defendant denies, Defendant contended that said violations would only be
4 considered to be “initial violations” and thus heightened “subsequent violation” penalties were
5 not warranted. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163
6 Cal.App.4th 1157, 1208-09 (Employer cannot be presumed to be aware that its continuing
7 underpayment of employees is a violation subject to penalties until has been notified that it is a
8 violation).

9 Defendant also contended that, with respect to a PAGA claim, the Court was unlikely to
10 assess cumulative penalties for the maximum numbers of possible separate Labor Code violations,
11 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain
12 conduct may be regulated by multiple provisions of the Labor Code that are interrelated and work
13 in tandem. As such, Defendant contended that cumulative penalties and heightened penalties
14 would be unjust, arbitrary, oppressive, and confiscatory.³⁹

15 While Plaintiff maintains that her PAGA claims have merit, in reaching the Settlement,
16 Plaintiff and her counsel took into account the strengths and weaknesses of each side’s position
17 and the uncertainty of how the case might have concluded as the litigation continued, at trial,
18 and/or appeals.⁴⁰

19 The provisions of the Labor Code potentially triggering PAGA penalties in this case
20 include but are not limited to Labor Code sections 201, 204, 226(a), 226.7, 510, 512(a), 1194,
21 1197, 1197.1, 1198, 2800, and 2802. Defendant asserted that, regardless of the results of the
22 underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary.
23 Defendant also maintained that, in addition to its strong arguments against the underlying claims,
24 it had a strong argument that it would be unjust to award maximum PAGA penalties given the
25 current unsettled state of law.⁴¹

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27 ³⁸ Han Decl., at ¶ 19.

28 ³⁹ *Id.*, at ¶ 20.

⁴⁰ *Id.*, at ¶ 21.

⁴¹ Han Dec., ¶ 22.

1 Plaintiff's Counsel calculated penalties under this cause of action by multiplying the
2 number of active Aggrieved Employees (because of the shortened statutory period for this claim),
3 by the civil penalties that each could be awarded for the Labor Code sections enumerated under
4 Labor Code section 2699.5 that were applicable in this case. Class Counsel then applied discounts
5 in light of the countervailing arguments with regard to the other causes of action, as well as the
6 Court's power to award "a lesser amount than the maximum civil liability." Lab. Code §
7 2699(e)(2).⁴²

8 Given the state of the law and the range of PAGA penalties requested and actually awarded
9 in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
10 penalties. However, if PAGA penalties are granted on any one of the violations alleged in
11 Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be
12 approximately \$4,512,600 (([1 x \$100] + [34 x \$200]) x 654 employees). Plaintiff calculated
13 Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the
14 average number of pay periods (35) during the one-year statutory period. Multiplying the PAGA
15 exposure by the number of alleged violations under the PAGA theories of recovery (6) gives
16 potential civil penalties of \$27,075,600.⁴³

17 Although Plaintiff argued she could obtain over \$27 million for PAGA penalties, it seems
18 highly unlikely that the Court would award such a large amount.⁴⁴ PAGA's plain language
19 indicates that an employer will be assessed a lower, "initial" penalty for each initial pay period in
20 which a violation occurs, and a higher, "subsequent" penalty for each subsequent pay period in
21 which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163
22 Cal.App.4th 1157; however, the court held, "Until the employer has been notified that it is violating
23 a Labor Code provision (whether or not the commissioner or court chooses to impose penalties),
24 the employer cannot be presumed to be aware that its continuing underpayment of employees is a
25 'violation' subject to penalties [and will be assessed only the 'initial' violation rate]." (*Amaral*,
26 *supra*, 163 Cal.App.4th at 1209.) This language could be interpreted as indicating that until the

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28 ⁴² Han Dec., at ¶ 23.

⁴³ *Id.*, at ¶ 24.

⁴⁴ Han Dec., at ¶ 25.

1 Labor Commissioner or a court informs an employer that it has violated the Labor Code, the
2 employer can only be assessed the “initial” violation rate. Under this interpretation, the maximum
3 individual civil penalty for one statutory violation is \$65,400 (654 employees x 100 (initial
4 violation)), and for all possible Labor Code violations is \$392,400.

5 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be
6 “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for
7 different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
8 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
9 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1),
10 which states that “an aggrieved employee may recover the civil penalty described in subdivision
11 (f)...on behalf of himself or herself and other current or former employees against whom one or
12 more of the alleged violations was committed” (emphasis added). However, Defendants
13 contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013)
14 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the
15 aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties.
16 Without stacking and limited to the initial violation, the PAGA penalties would be limited to
17 \$65,400 on the low end and \$392,400 on the high end based on six (6) major theories of recovery.

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

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1 Under a more conservative approach, Plaintiff's Counsel considered the possibility that
2 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$392,400
3 [654 employees x \$100 x 6 theories of recovery].⁴⁵

4 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
5 Many of the causes of action brought were cumulative for which the Court may or may not stack
6 the violations. Also, for the off-the-clock, overtime, reimbursement, and meal and rest period
7 violations, they did not occur every single pay period. Thus, the maximum penalties for each pay
8 period are not justified. It was indeed arguable whether the Court would award the maximum
9 penalties under the law. Thus, a Maximum Settlement Amount of \$995,000 to PAGA civil
10 penalties was reasonable and significant. Where PAGA penalties are negotiated in good faith and
11 "there is no indication that [the] amount was the result of self-interest at the expense of other Class
12 Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case
13 No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom*
14 *Com. Cases*, 186 Cal. App. 4th 576, 579 (20 10) ("[T]rial court did not abuse its discretion in
15 approving a settlement which does not allocate any damages to the PAGA claims."). The
16 negotiations were under the auspices of a well-respected mediator, Deborah Saxe, who regularly
17 mediates wage and hour litigation involving PAGA claims. Plaintiff's Counsel negotiated that
18 approximately an average of \$43.89 in penalties per aggrieved pay period would be fair and
19 reasonable. Considering the recent cases justifying \$5 per pay period, *see e.g. Carrington v.*
20 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, \$43.89 per pay period is an excellent result.⁴⁶

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

22 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
23 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, "unless the settlement
24 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
25 litigation with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
26 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

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28 ⁴⁵ Han Dec., at ¶ 25.

⁴⁶ Han Dec., at ¶ 26.

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the PAGA claim. Plaintiff's Counsel propounded multiple sets of written discovery requests (Form Interrogatories, Set One, Special Interrogatories, Sets One, Request for Production of Documents, Set One, Requests for Admissions, Set One). In addition, the Parties exchanged documents and data relevant to Plaintiff's claim and Defendant's defenses, including, and not limited to, Plaintiff's employment records, Aggrieved Employees' general job responsibilities, payroll data, workweek data, and Defendant's exemplar operations and employee handbook, in an effort to determine the potential value and strength of the PAGA claim.⁴⁷ 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, Plaintiff's Counsel's calculation of the potential penalties recoverable under the PAGA.⁴⁸

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.⁴⁹ 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.⁵⁰ Additionally, there is a real possibility that Plaintiff would recover nothing, for herself, or on behalf of Aggrieved Employees 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.

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⁴⁷ Han Dec., at ¶¶ 13, 21.

⁴⁸ *Id.*, at ¶¶ 12-13.

⁴⁹ Han Dec., at ¶ 19.

⁵⁰ *Id.*, at ¶ 21.

1 The Settlement provides a significant monetary benefit to the LWDA and Aggrieved
2 Employees and falls well within the range of acceptable settlement under the circumstances.
3 Under the Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$995,000,
4 which encompasses the Net Settlement Amount, the Attorneys Fees Award, the Litigation Costs
5 Award, the Settlement Administration Costs, and the Incentive Award.⁵¹ Subject to Court
6 Approval, the following amounts will be subtracted from the Maximum Settlement Amount to
7 yield the Net Settlement Amount: (1) the Attorneys' Fees Award of \$348,250; (2) the Litigation
8 Costs Award of \$16,843.19; (3) Settlement Administration Costs currently estimated at \$3,950;
9 and (4) the Incentive Award of \$7,500 to Plaintiff.⁵² The Net Settlement Amount is currently
10 estimated to be 618,456.81, seventy-five percent (75%) of which (\$463,842.60) will be paid to
11 the LWDA and twenty-five percent (25%) of which (\$154,614.20) will be paid to the Aggrieved
12 Employees.⁵³ There is no reason to doubt the fairness of the proposed plan of allocation of the Net
13 Settlement Amount as it fully complies with Labor Code section 2699(i).

14 The Settlement is a compromise of disputed claims. Plaintiff and her counsel recognize
15 the expense and length of continued proceedings necessary to litigate the disputes through trial
16 and any possible appeals.⁵⁴ Plaintiff and her counsel have also taken into account the uncertainty
17 and risk of the outcome of further litigation, and the difficulties and delays inherent in such
18 litigation. Plaintiff and her counsel are also aware of the burdens of proof necessary to establish
19 liability, both generally and in response to Defendant's defenses, and the difficulties in
20 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff and
21 other Aggrieved Employees. Plaintiff and her counsel have also taken into account Defendant's
22 agreement to enter into a settlement that confers significant relief upon the LWDA and Aggrieved
23 Employees.⁵⁵

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27 ⁵¹ Settlement Agreement, at § 4.1.

28 ⁵² *Id.*, at § 4.1.

⁵³ *Id.*, at § 4.3.

⁵⁴ Han Dec., at ¶ 21.

⁵⁵ *Id.*, at ¶ 18.

1 Considering all of the facts in this case, Plaintiff and her counsel have determined that the
2 Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it
3 is in the best interests of the LWDA and Aggrieved Employees Members.⁵⁶

4 As discussed in § II1.D, *infra*, payment of these penalties is conditioned on a limited
5 release of claims under PAGA. The Settlement does not include a general release of claims on
6 behalf of the non-party Aggrieved Employees, nor does it release their non-PAGA substantive
7 claims for the underlying Labor Code violations. “Absent employees do not own a personal claim
8 for PAGA civil penalties and whatever personal claims the absent employees might have for relief
9 are not at stake.” *Williams, supra*, 3 Cal.5th at 547. In other words, with respect to Aggrieved
10 Employees, the effect of this settlement is only to bar Aggrieved Employees from pursuing any
11 representative and/or individual PAGA claim for civil penalties, for purported Labor Code
12 violations during the period covered by the Settlement.

13 The result achieved in this case, and the PAGA allocation provided by this Settlement, is
14 well within the range of acceptable settlement under the circumstances, especially when compared
15 to the settlement of PAGA claims approved as reasonable in other cases.⁵⁷ Here, the value
16 obtained for settlement of the PAGA claim is very significant, and it will be distributed in
17 accordance with the PAGA statute, to supplement the LWDA budget to educate employees and
18 employers and seek enforcement of labor laws.

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

21 Plaintiff’s Counsel are highly experienced in complex representative and class action
22 wage-and-hour litigation.⁵⁸ In the view of Plaintiff’s Counsel, the benefit conferred by the
23 Settlement is eminently fair and reasonable, and is in the best interests of the LWDA and
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25 ⁵⁶ Han Dec., at ¶ 34.

26 ⁵⁷ See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833 (May 2017) (approving
27 \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving
28 \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14
(approving \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1
(approving \$10,000 out 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).

⁵⁸ Han Dec., at ¶¶ 5-8, Exh. 1.

1 Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the
2 substantial monetary benefits provided for by the Settlement.⁵⁹ Furthermore, courts have
3 acknowledged that “the interests of plaintiff, counsel and other potentially aggrieved employees
4 are largely aligned. All stand to gain from proving as convincingly as possible as many Labor
5 Code violations as the evidence will sustain[.]” *Williams, supra*, 548 (citing Lab. Code §
6 2699(g)(1)(i)).

7 **VI. APPROVAL OF THE REQUESTED ATTORNEYS’ FEES AWARD.**

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

9 The Settlement establishes a Maximum Settlement Amount of \$995,000.⁶⁰ The Settlement
10 provides for Plaintiff’s Counsel to apply to the Court for an Attorneys’ Fees Award of up to thirty-
11 five percent (35%) of the Maximum Settlement Amount, which is \$348,250.⁶¹ The requested
12 Attorneys’ Fees Award is commensurate with (1) the risk Plaintiff’s Counsel took in bringing and
13 litigating this case, (2) the time, effort and expense dedicated to the case, (3) the skill and
14 determination Plaintiff’s Counsel has shown, (4) the results Plaintiff’s Counsel has achieved
15 throughout the litigation, (5) the value that Plaintiff’s Counsel has achieved for Plaintiff, the
16 LWDA, and Aggrieved Employees, and (6) the other cases Plaintiff’s Counsel could not pursue
17 in order to devote its time and efforts to this matter.

18 Plaintiff’s Counsel are entitled to recover reasonable attorneys’ fees and costs as a matter
19 of right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiff’s Counsel is also entitled to fees
20 and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is
21 by definition “for the benefit” of others and has secured monetary awards for a large number of
22 Aggrieved Employees, as well as the LWDA.⁶²

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26 ⁵⁹ Han Dec., at ¶ 34.

27 ⁶⁰ Settlement Agreement, at ¶ 7(a).

28 ⁶¹ *Id.*, at ¶ 7(b)(i).

⁶² See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App4th 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 The LWDA Payment will also benefit the agency in enforcing labor laws and educating
2 “employers and employees about their rights and responsibilities under [the Labor Code].” Lab.
3 Code § 2699(i).

4 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary
5 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
6 confirmed by the California Supreme Court in recent years. *Laffitte v. Robert Half Int’l, Inc.*
7 (2016) 1 Cal.5th 480 at pp. 486 & 506. While trial courts have discretion to apply either a lodestar
8 method or percentage of-the-fund method, the California Supreme Court has taken the position
9 that trial courts also “retain the discretion to forgo a lodestar cross-check and use other means to
10 evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund
11 method survives in California.” *Id.* (internal quotes omitted); see also *Wershba, supra*, 91
12 Cal.App. 4th at p. 253.

13 Courts award fees to serve as an economic incentive for lawyers to undertake litigation in
14 order to achieve increased access to the judicial system for meritorious claims and to enhance
15 deterrents to wrongdoing. This is especially true in situations where multiple similar alleged
16 wrongs would not be economically feasible to pursue individually, such as here. See A. Conte,
17 *Attorney Fee Awards* (2d ed. 1993) 104l at p. 6.

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

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

7 The percentage fee method is preferred in representative actions because “it better
8 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
9 Cal.App.4th at p. 49. California law provides that the award for attorneys’ fees should be
10 equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation
11 based on the result achieved and risk incurred. See *Lealao, supra*, 82 Cal.App.4th at p. 47-50;
12 *Laffitte, supra*, 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the
13 defendant agrees to pay the attorneys a percentage of the fund created by the settlement, use of
14 that percentage method is appropriate. *Lealao* at p. 32. Fee awards that undercompensate counsel
15 for their work will “chill the private enforcement essential to the vindication of many legal rights
16 and obstruct the representative actions that often relieve the courts of the need to separately
17 adjudicate numerous claims,” *Lealao*. at 3. Therefore, fees in class and representative actions
18 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
19 attorney and client in comparable litigation. *Id.* at 48. “The ultimate goal ... is the award of a
20 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.”
21 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-558 (quotation omitted). Historically,
22 courts have awarded fees as high as fifty percent (50%) of the settlement recovered, depending on
23 the circumstances of the case.⁶³

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25 ⁶³ See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees of 45% of the \$7.3
26 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp.
27 1195 (awarding approximately 53% of the settlement fund as attorney fees). California courts routinely approve
28 attorneys’ fee 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
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”).

1 Plaintiff's Counsel's application for attorneys' fees, in light of the facts and circumstances
2 surrounding the case, is well within the range of reasonableness. Plaintiff's Counsel has
3 investigated and litigated this case for months before mediation, with the real possibility of an
4 unsuccessful outcome and no fee recovery of any kind.⁶⁴ The ongoing work has been extensive,
5 and ultimately successful in achieving a settlement resolution. See, § VI.B.1, *infra*.

6 In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and
7 will not receive any compensation until recovery is obtained.⁶⁵ Plaintiff's Counsel are well-
8 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable
9 result for Plaintiff, Aggrieved Employees, and the LWDA.⁶⁶ Considering the amount of the fees
10 requested, work performed, risks incurred, success of this litigation, and experience of Plaintiff's
11 Counsel in handling similar matters, the requested Attorneys' Fees Award and Litigation Costs
12 Award are reasonable and should be awarded.

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

15 The factors which courts consider in determining whether fee awards are reasonable,
16 support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the
17 novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal services
18 properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case;
19 (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by
20 the client or the circumstances; (8) the amount involved and results obtained; (9) the experience,
21 reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length
22 of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condo.*
23 *Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. Each of these factors favors the attorney
24 fee award sought herein; however, some of the most relevant factors to this Court's fee
25 determination will be addressed below. It should be highlighted that the percentage award sought
26 is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of
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28 ⁶⁴ Han Dec., at ¶¶ 11-13.

⁶⁵ *Id.*, at ¶ 31.

⁶⁶ *Id.*, at ¶¶ 5-8, 34, Exh. 1.

1 the fee and the risks taken in commencing this action, the skill and determination required, the
2 results achieved by Plaintiff's Counsel, and the value of the Settlement that Plaintiff's Counsel
3 has obtained on behalf of Plaintiff, the LWDA, and Aggrieved Employees. As such, an award of
4 thirty-five percent (35%) of the Maximum Settlement Amount is reasonable.

5 ***1. Time & Labor***

6 Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour
7 actions to bring this matter to a successful conclusion. Prior to commencing this lawsuit,
8 Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal
9 issues, Defendant's business, and its operations and employment policies, practices, and
10 procedures.⁶⁷ Plaintiff's Counsel conducted investigations and discovery into the facts of the case,
11 including reviewing and analyzing a large volume of data and documents regarding Aggrieved
12 Employees' employment with Defendant, *inter alia*, time and payroll records, workweeks data,
13 and Defendant's operations and employment policies, practices, and procedures (including and
14 not limited to the Employee Handbook, acknowledgments re: timekeeping requirements, meal
15 breaks and rest breaks, job descriptions, various procedures, and guidelines). During the litigation
16 of the case, Plaintiff's Counsel interviewed and obtained information from Plaintiff and Aggrieved
17 Employees, served multiple sets of discovery requests, conducted legal research, reviewed and
18 analyzed a volume of documents and data, evaluated the PAGA claim and calculated the potential
19 value of penalties recoverable under PAGA, and prepared the mediation brief.⁶⁸ Plaintiff's
20 Counsel also performed other work including, *inter alia*, case strategy and analysis; drafting,
21 reviewing, and revising pleadings and motions; preparing for and attending court proceedings;
22 undertaking calculations of the value of the claims; and engaging in extensive settlement
23 negotiations.⁶⁹

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28 ⁶⁷ Han Dec., at ¶¶ 11.

⁶⁸ Han Dec. ¶¶ 12-13.

⁶⁹ *Id.*, at ¶ 12.

1 Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary
2 to prosecute the case with maximum efficiency, and has fully and actively participated in this
3 litigation process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the
4 accompanying Declaration of Douglas Han sets forth in detail the hours that Plaintiff's Counsel
5 has spent performing tasks in this matter. Plaintiff's Counsel has collectively spent 565.6 hours to
6 obtain a recovery on behalf of Plaintiff, Aggrieved Employees, and the LWDA. These hours were
7 required to bring the case to its successful conclusion.⁷⁰ In light of the value of time expended and
8 the carrying of costs involved in this litigation, the requested Attorneys' Fees Award is fair,
9 adequate, and reasonable.

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

11 The skill required to properly litigate this case is evident not only in the results achieved,
12 but in the steps necessary to reach the same. Defendant retained well-respected counsel to
13 represent their defenses. Defendant and its counsel felt very strongly about Defendant's ability to
14 prevail on the merits and avoid representative adjudication of PAGA penalties. Plaintiff and her
15 counsel believe that the PAGA claim has merit and that Plaintiff would prevail at trial. Plaintiff's
16 Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and
17 during the litigation. Plaintiff's Counsel took steps to prepare the case for trial, and had every
18 intention of taking the case to trial if Defendant did not offer an appropriate settlement.

19 Plaintiff's Counsel's effort and skill was used to, among other things, investigate the
20 allegations and gather facts, research the legal issues, analyze data and information obtained from
21 Defendant, Plaintiff, and through other sources, evaluate the PAGA claim, and negotiate the
22 Settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used their
23 extensive experience and skill in the handling of complex wage-and-hour matters to advocate for
24 and obtain a recovery now, with maximum efficiency, as opposed to the possibility of future
25 recovery, after great expense and time.⁷¹

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28 ⁷⁰ Han Dec., at ¶ 29, Exh. 3.

⁷¹ Han Dec., at ¶¶ 10-14.

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

2 The Settlement represents a fair resolution of this lawsuit, given the uncertainty and risks
3 of further litigation.⁷² Had the case not settled, Defendant would have vigorously challenged
4 manageability and liability, and sought to have the Court reduce penalties. Defendant, however,
5 faced risks as well, including and not limited to, the Court assessing penalties. Additionally,
6 preparing for trial would have been extraordinarily expensive for the Parties.

7 At this stage, the Settlement is preferred over continued litigation because such resolutions
8 save time and money which would otherwise be used in litigation. The risks and expenses of
9 further litigation outweighed any benefit that might have been gained otherwise. The Settlement
10 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
11 litigation involving expert discovery, trial preparation, and appellate review of those proceedings.
12 The Settlement offers present and considerable monetary relief to Aggrieved Employees and the
13 LWDA while avoiding further expense, risk, and delay in obtaining possible further recovery.

14 **4. *Whether the Fee Is Fixed or Contingent***

15 The representation provided by Plaintiff's Counsel has been wholly contingent and
16 Plaintiff's Counsel took on this matter without knowing whether it would obtain any recovery.
17 Plaintiff's Counsel has invested 565.6 hours of time to obtain relief on behalf of Plaintiff,
18 Aggrieved Employees, and the LWDA.⁷³ Plaintiff's Counsel are also requesting a Litigation Costs
19 Award for reimbursement of its reasonable litigation costs and expenses in the amount of
20 \$16,843.19, as provided for in the Settlement Agreement.⁷⁴

21 Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any
22 compensation until recovery is obtained.⁷⁵ If Plaintiff's Counsel had not been successful, the time
23 that it had devoted to litigating the case would have been for naught, and would not have produced
24 any fee or reimbursement of costs. Plaintiff's Counsel are well-experienced in complex wage-
25 and-hour litigation and used that experience to obtain a great result for Aggrieved Employees and
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⁷² Han Dec., at ¶ 34.

28 ⁷³ Han Dec., at ¶ 29, Exh. 3.

⁷⁴ *Id.*, at ¶ 31, Exh. 5.

⁷⁵ *Id.*, at ¶ 31.

1 the LWDA.⁷⁶ The skill and determination that Plaintiff's Counsel has shown justify the requested
2 Attorneys' Fees Award and Litigation Costs Award. Considering the amounts requested, work
3 performed, and risks incurred, the requested Attorneys' Fees Award and Litigation Costs Award
4 are reasonable and should be awarded.

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

6 The results achieved, particularly in light of the difficulties inherent in similar cases and
7 the specific difficulties faced in this case, are considerable. Here, the results achieved, and the
8 recovery obtained on behalf of Plaintiff, Aggrieved Employees, and the LWDA represent a fair
9 and reasonable resolution of this lawsuit. Plaintiff's Counsel's efforts have resulted in a settlement
10 that provides for a Maximum Settlement Amount of \$995,000, and it is currently estimated that
11 the Net Settlement Amount available for distribution to Aggrieved Employees and the LWDA, is
12 \$618,456.81.⁷⁷

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

14 Plaintiff's Counsel are a recognized class action and complex litigation law firm that
15 employed its attorneys' knowledge, skills, and experience in bringing the case to a successful
16 conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation
17 experience, have recovered millions of dollars on behalf of thousands of individuals in California,
18 and have successfully handled numerous significant wage-and-hour class action and
19 representative action cases.⁷⁸

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

21 Plaintiff's Counsel has performed work that is of significant value based on reasonable
22 hours and prevailing hourly rates of compensation. While the percentage-of-the-benefit approach
23 is endorsed as the better approximation of the workings of the marketplace than the lodestar
24 approach, courts may also use the lodestar method to "cross-check" the results of the other. See
25 *Laffitte, supra*, 1 Cal.5th at p. 505 ("A lodestar cross-check is simply a quantitative method for
26 bringing a measure of the time spent by counsel into the trial court's reasonableness
27

28 ⁷⁶ Han Dec., at ¶¶ 5-8, 34, Exh. 1.

⁷⁷ Han Dec. at ¶ 16.

⁷⁸ *Id.*, ¶ 5-8, Exh. 1.

determination”); see also, e.g., *Vizcaino*, 290 F.3d at p. 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective[.]”). The lodestar calculation “does not override the trial court’s primary determination of the fee as a percentage” and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, *supra*, 1 Cal.5th at p. 505. The lodestar is calculated using reasonable hours and reasonable prevailing hourly rates for the attorneys—counsel is entitled to compensation for every hour reasonably spent on the matter. *Ketchum*, *supra*, 24 Cal.4th at p. 1131-33.

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

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

As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant made it clear soon after the action was filed that they disputed all of Plaintiff’s allegations and disputed that representative adjudication was appropriate. Defendant also argued, *inter alia*, that they had legally compliant employment policies and practices throughout the statutory period.⁷⁹ Defendant raised affirmative defenses and denied liability.⁸⁰ The handling of this litigation involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Plaintiff’s Counsel has, as a result of its extensive experience in complex and class action wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward trial, including taking and defending declarant and expert depositions, PMK depositions, conducting additional extensive formal discovery, and engaging in further extensive motion practice. As Plaintiff’s Counsel geared up for these battles, Plaintiff’s Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations. Plaintiff’s Counsel had to bring together a volume of data and documents that were produced by Defendant and obtained from other sources, and conducted extensive review and analysis of these documents and data to strategize and evaluate the case.⁸¹

⁷⁹ Han Dec., at ¶ 19.

⁸⁰ *Id.*, at ¶¶ 19-20.

⁸¹ *Id.*, ¶¶ 12-13.

As set forth above in § VI.B.1 *infra*, attached to the Declaration of Douglas Han 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.⁸² The chart demonstrates that Justice Law Corporation have spent a total of 565.6 hours on this matter. In light of these facts and circumstances, Plaintiff's Counsel has spent a reasonable number of hours to achieve results on behalf of Plaintiff, Aggrieved Employees, and the LWDA.

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 p. 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 lawsuit and all the way up to approval of the Settlement, and its dedication to the representation of Aggrieved Employees and the LWDA has precluded other employment. Plaintiff's Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel successfully reached a settlement that amounts to a Maximum Settlement Amount of \$995,000.

Plaintiff's Counsel expended a significant amount of time in the litigation of this matter as detailed above. Plaintiff's Counsel's hourly rates (\$750 for Douglas Han, \$650 for Shunt Tatavos-Gharajeh, and \$475 for Arsiné Grigoryan) are commensurate with the hourly rates of other wage-and-hour class action attorneys in California and is well within the contingency fee practice. Moreover, the hourly rates comport with the Laffey Matrix. While the circumstance

⁸² Han Dec., Exhibit 3.

1 of every case is unique, the fact remains that the work performed and efforts undertaken by
2 Plaintiff's Counsel in this matter justifies the requested Attorneys' Fees Award.⁸³

3 The lodestar method as a cross-check to the percentage fee sought strongly supports the
4 reasonableness of the requested fee award. Based on the attorney time expended on this matter,
5 the fees incurred to date total \$353,495, which results in a slight negative multiplier cross-checked
6 to the requested amount of \$348,250.⁸⁴ Plaintiff's Counsel, however, seeks a percentage of the
7 Maximum Settlement Amount in attorneys' fees of \$348,250, which is thirty-five percent (35%)
8 of the Maximum Settlement Amount. Accordingly, Attorneys' Fees Award of \$348,250 to
9 Plaintiff's Counsel is reasonable and justified based on the percentage method and a lodestar
10 cross-check and should be approved and granted.

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

13 The Settlement provides for a Litigation Costs Award for reimbursement of litigation costs
14 and expenses of up to \$30,000. As set forth in the Declaration of Douglas Han, Plaintiff's Counsel
15 has collectively incurred \$16,843.19 in litigation costs and expenses, which is less than the
16 maximum amount allocated under the Settlement Agreement and disclosed in the notice.⁸⁵
17 Plaintiff's Counsel seeks only the \$16,843.19 in litigation costs and expenses. Plaintiff's
18 Counsel's litigation costs and expenses incurred were reasonable and necessary in the prosecution
19 of this matter.⁸⁶ Accordingly, Plaintiff's Counsel respectfully request that the Court order
20 reimbursement of the costs and expenses in the amount of \$16,843.19 to Plaintiff's Counsel.

21 **VIII. APPROVAL OF THE PROPOSED COVER LETTER TO AGGRIEVED EMPLOYEES**

22 Although PAGA does not require notice to unnamed Aggrieved Employees of the
23 Settlement, the Parties prepared, and now present for the Court's consideration and approval, an
24 explanatory cover letter for transmission to Aggrieved Employees along with their payments,
25 substantially in the form attached as Exhibit A to the Settlement Agreement. The explanatory
26 cover letter accurately informs Aggrieved Employees about this action and the Settlement.

27 ⁸³ Han Dec., at ¶ 30, Exh 4.

28 ⁸⁴ *Id.*, at ¶ 30.

⁸⁵ Han Dec., at ¶ 31; Settlement Agreement, at ¶ 7(b)(ii).

⁸⁶ Han Dec., at ¶ 31.

1 Accordingly, Plaintiff respectfully requests that the Court approve the explanatory cover letter.

2 **IX. APPROVAL OF THE PROPOSED INCENTIVE AWARD TO PLAINTIFF.**

3 The Settlement provides for an incentive payment of \$7,500 to be paid to Plaintiff.⁸⁷ The
4 purpose of such an award is to incentivize plaintiffs to step into the shoes of the state labor agency
5 and undertake the risks associated with initiating a lawsuit and serving in a representative capacity.
6 See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate
7 named plaintiff “for [her] efforts in bringing the action”); *Clark v. Am. Residential Servs., LLC*
8 (2009) 175 Cal.App.4th 785, 804 (“an incentive award is appropriate ‘if it is necessary to induce
9 an individual to participate in the suit’”); accord *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001)
10 200 F.R.D. 685, 694 (internal quotation marks omitted) (“Courts routinely approve incentive
11 awards to compensate named plaintiffs for the services they provided and the risks they incurred
12 during the course of the [...] litigation.”); see also, e.g., *Resendez, supra*, Los Angeles County
13 Court, Case No. BC59689 (approving \$10,000 Incentive Award in a PAGA action).

14 Here, Plaintiff contributed considerable time and effort to the litigation in order to enforce
15 the Labor Code on behalf of the LWDA and for the benefit of other Aggrieved Employees,
16 producing relevant documents and past employment records, and providing the facts and evidence
17 necessary to support the allegations asserted in this action.⁸⁸ Plaintiff was available whenever her
18 counsel needed her and tried to obtain documents and information that would aid the litigation of
19 the PAGA claim and recovery of benefits for the LWDA and Aggrieved Employees.⁸⁹
20 Accordingly, it is reasonable and just for Plaintiff to receive an Incentive Award of \$7,500, in
21 addition to the individual Settlement Share she will receive as an Aggrieved Employee, for her
22 services in litigating this action to enforce California wage-and-hour laws.

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28 ⁸⁷ Settlement Agreement, ¶ 7(b)(iv)(B)(3).

⁸⁸ Han Dec., at ¶ 33; Declaration of Priscilla Ramirez (“Ramirez Dec.”), at ¶¶ 4-8.

⁸⁹ Han Dec., at ¶ 33; Ramirez Dec., at ¶¶ 6-8.

1 **X. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD**
2 **BE APPROVED.**

3 As set forth in the bid submitted by Phoenix Class Action Administration Solutions
4 (“Phoenix”), the total estimated Administration Costs are \$3,950. The costs incurred include, but
5 are not limited to, expenses for establishing a qualified settlement fund pursuant to 26 U.S.C. §
6 486B; making all payments required by the Agreement; handling all required state and federal tax
7 withholding and reporting related thereto to the extent necessary; and issuing all appropriate tax
8 forms to Plaintiff, Plaintiff’s Counsel, the Aggrieved Employees, and the LWDA resulting from
9 the settlement payments under the Agreement.⁹⁰ Accordingly, the Court should grant final
10 approval of payment of \$3,950 to Phoenix, a necessary third-party to the notice and settlement
11 process.

12 **XI. CONCLUSION**

13 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise
14 reached through arm’s-length negotiations and considers the risks, complexity, and expense of
15 further litigation. Based thereon, Plaintiff respectfully request that the Court approve the
16 Settlement, including the plan of allocation and distribution of the Maximum Settlement Amount
17 for payments to the LWDA, to Aggrieved Employees, the Attorneys Fees Award, the Litigation
18 Costs Award, Administration Costs, and the Incentive Award.

19
20 Dated: June 9, 2021

JUSTICE LAW CORPORATION

21 By: 
22 Douglas Han
23 *Attorneys for Plaintiff*

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 ⁹⁰ Han Dec., at ¶ 32.

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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 June 9, 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 INCENTIVE AWARD; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Ramirez v. Amphastar Pharmaceuticals, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-782709-20**
Court Case No.: CIVDS2011327
San Bernardino County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on June 9, 2021, at Pasadena, California.



Allana Rivera